EXHIBIT X5

STATEMENT & ANNEXURES

OF

MXOLISI DUKOANA
(DATED 29 JUNE 2019)

IN THE COMMISSION ON STATE CAPTURE
HELD IN JOHANNESBURG

BEFORE DEPUTY CHIEF JUSTICE RM ZONDO

EVIDENCE OF:

MXOLISI DUKOANA

STATEMENT

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A. INTRODUCTION

I, the undersigned,

MXOLISI DUKOANA

do hereby make oath and say:

1. I am a deponent to this statement and reside in Welkom, Free State Province. My background and my experience in government and the ruling party were set out in detail in my first affidavit before the Commission.

2. The facts set out in this statement are within my personal knowledge and belief, unless stated otherwise or the context of what I declare makes the contrary apparent, and are to the best of my knowledge and belief both true and correct.

3. To the extent that I make submissions of a legal nature in this statement, I do so on the basis of the counsel obtained in the course of preparation of this statement from my legal representatives, and which counsel I verily accept to be the correct legal position.

4. This is my second appearance at the Commission having so appeared on 5 April 2019, detailing the circumstances around my visits to the Gupta Compound, Sahara and Oakbay offices.

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5. I am advised it is apt to deal with certain pertinent matters relating to my first testimony on 5 April instant. It is apt I deal with the following:

   5.1. Iqbal Sharma's statement; and

   5.2. Documents in Sharma's statement.

B. IQBAL SHARMA'S STATEMENT

6. On the afternoon of 4 April 2019, my legal team and I were furnished with a commissioned statement by Mr Iqbal Sharma ("Sharma") in response to my statement. During my testimony on 5 April instant, my legal representatives and I had not considered the contents of Sharma's statement in detail.

7. Sharma's statement was not intended to be an application to cross examine me but an to attempt to respond to allegations I made relating to him. Notwithstanding the status of Sharma's statement at the Commission, I am advised that I need to deal with relevant matters canvassed in his statement. Further, in Sharma's annexures, there are documents that I purportedly signed and I will demonstrate that the signatures appended in those annexures have been forged.

8. Sharma's explanation (par 11) on draft letters he admits he drafted on my behalf is that such assignment was at my request. I deny such assertion. My office was well capacitated to draft any correspondence to any stakeholder. I personally have requisite skills to draft any letter on my behalf and I did not need Sharma's purported expertise.

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9. Sharma is a former senior employee of a state-owned company. His knowledge of the Public Finance Management Act 1 of 1999, as amended ("the PFMA"), Treasury Regulations and Instructions far exceed mine. Sharma does not explain why in his view, given his prowess in the legislative framework did he find it apposite to deal with me as the MEC, instead of dealing with the accounting officer of the department. The answer to that is simple: he was under the instructions of Magashule in furtherance of advancing the commercial interests of the Guptas. There is no other cogent reason to justify Sharma's persistent conduct towards me as the MEC at the time.

10. Sharma attached to his statement marked **"IS 1"**, (paras 5-7) a copy of a tender on Spatial Development Framework for Matjhabeng Local Municipality and yet he does not explain efforts he made to address any letter to relevant officials at the said municipality if at all his presentation on behalf of Nulane and P3i was premised on the said tender document. Sharma is simply less than frank with the Commission and his version is a blatant misrepresentation.

11. Sharma, further (par 8) describes Tshepiso Magashule as a businessman whom he knew from the Free State as a person who could facilitate a meeting with me. A public representative such as the MEC could be contacted via his office with no need to have such meeting facilitated by a son to the Premier or any intermediary.

12. At par 9, Sharma states that he met me "to discuss the idea that they had and the way forward in relation to a new concept for the lapsed tender". As the MEC, I would

not know about tenders issued by municipalities in the Free State province. I knew nothing about the "lapsed tender" and at no stage was such tender discussed with me by either the Executive Mayor or Municipal Manager of Matjhabeng Local Municipality consistent with intergovernmental relations framework. In any case neither the PFMA nor the Municipal Finance Management Act and their respective regulations allowed politicians to take any decisions regarding procurement issues. Therefore, to suggest that an idea that is procurement in nature was discussed with me is a fabrication.

13. At par 10, Sharma claims that I advised them to approach the Provincial Executive Committee ("Provincial EXCO") if they wished to make a presentation. As adverted above, Sharma would have known as a former senior manager of a state-owned company the process to be undertaken for unsolicited bids in terms of the PFMA and Treasury Regulations. It boggles my mind that such elementary aspect, suddenly escaped his attention. I deny ever advising Sharma to approach the Provincial Exco for their presentation. I was not even present when the said presentation was presented to the Provincial Exco.

14. I now turn to documents Sharma states under oath that I purportedly signed.

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C. DOCUMENTS IN SHARMA'S STATEMENT

15. I find it startling that Sharma has produced the documents I purportedly signed. These are the same documents the Free State government states it does not have in its possession, let alone in its records. The said documents are in the letterhead of the office I used to occupy as MEC.

16. If one has regard to all the annexures and the signatures (purportedly mine) appended in the documents, one does not have to be a signature expert to come to a conclusion that my purported signatures are forged.

17. A careful glance at pages 17 and 18 of the Master Plan Agreement marked **"IS 5"**, underscores my submission that my purported signatures were brazenly forged. *Ex facie*, my two purported signatures are not identical by any measure and yet the document was signed on the same day, 5 October 2011, in Bloemfontein, apparently in the presence of Sharma and Mr Thomas for P3i.

18. On the said pages, I purportedly signed as both the Head of the Department ("the HOD") and as MEC. In the wisdom of Sharma, if his version was to be considered to be correct, my signing as both the accounting officer and executive authority means I had effectively usurped the powers I did not have. I was both the HOD and MEC at the same time inconsistent with the Constitution of the Republic, 1996 and the PFMA.

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19. I am advised that the originals of Sharma's annexures are required for purposes of subjecting them to signature or writing experts. I submit that my purported signatures were forged in all the annexures accompanying Sharma's statement.

20. Sharma's knowledge of the legislative framework with regards to public finance ought to have impelled him to remember that as MEC, it would have been unlawful of me to have signed any agreement with Nulane and P3i.

21. The HOD would have been the requisite official for such and compliance with the PFMA and Treasury Regulations is peremptory. Lest I forget, P3i is a company domiciled outside the borders of the Republic and there is a procedure to deal with international transactions or agreements that organs of state have to comply with. In this case, I had obtained no authority in writing or otherwise to conclude or append my signature on the agreement in issue.

22. The agreement itself seems to have been drafted without any involvement of the Chief State Law Advisor or any employee of the department from the Legal Department. The said agreement is not even in the letterhead of the government of Free State.

23. I wish Sharma could apply to cross-examine me and in turn be cross-examined by my legal team and that of the Commission to explain the glaring dissimilarities in my purported signatures and his sudden lack of knowledge of the legislative framework as it pertains to public finance and procurement.

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24. If the Master Plan Agreement was signed in Bloemfontein on 5 October 2011, it means Sharma and Mr Thomas travelled to Bloemfontein for that purpose. His travel records and diary would be of assistance to the Commission and he must produce them as evidence to thwart my version.

25. I must point out that I take the forgery of my signature in a serious light and I reserve my rights to a legal recourse including approaching the law enforcement agencies.

26. In this affidavit, I deal with the provincial government projects I deem to be acts of state capture at the behest of Mr Elias Sekgobelo Magashule (Magashule) or were politically sponsored by Magashule directly or indirectly, and expressly or tacitly.

27. I need to state that after my 5 April 2019 appearance at the Commission, Magashule was interviewed by Mr Samkelo Maseko from eNCA and in that interview, Magashule intimated that he is going to take me to court. Without delay, I instructed my attorney to address a letter to Magashule to receive any court documents pertaining to his legal threats. The letter was dispatched and Magashule confirmed receipt of same. For ease of reference, I annex hereto marked **"2DM 1"** and **"2DM 2"** as copies of the letter from my attorney and the response from Magashule's secretary.

28. I must state that to date, my attorneys have not received any correspondence such as a letter of demand for me to retract my submissions at the Commission nor legal documents from Magashule. I stand ready to face Magashule at any court in the Republic.

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29. As a disciplined member of the ANC, I have responded to a call made by the ANC to be of assistance to the Commission in its constitutional obligation to unearth and report acts of state capture and corruption.

30. Mindful of the risks associated with my appearance at the Commission, I am of the considered view that I cannot stand by and watch with disdain by not exposing the disciples of state capture and the Gupta lieutenants such as Magashule and others in the Free State. If I were to be silent, I would have surrendered the hard-won freedom to the dustbin of corruption at the altar of creed and risked to be judged harshly by the generations to come. I therefore cannot surrender. I need to speak out.

31. From the onset and before delving into details of my submissions, I must with brutal frankness make the following admissions:

31.1. I am one of the persons who served at the helm of the ANC in the Free State who protected, defended and promoted Magashule to be the long-serving chairperson of the ANC in the Free State;

31.2. I was one of those in the leadership of the ANC in the Free State who actively campaigned for Magashule to become Premier when he was overlooked by former Presidents Nelson Mandela and Thabo Mbeki;

31.3. I defended and supported Magashule when he was fired for corruption by Mr Mosioua Terror Lekota when he was Premier;

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31.4. When the PEC under Magashule's leadership was disbanded during the Presidencies of Mandela and Mbeki in the ANC, I supported Magashule;

31.5. Due to immense support we gave Magashule, he developed a personality cult and used the ANC as his shield to hide behind corruption; and

31.6. With the benefit of hindsight, there was wisdom why Mandela and Mbeki overlooked Magashule as Premier of the Free State over the years.

32. Having served and worked with Magashule in the ANC and government closely, and having heard him intimating his frustrations with government processes and procedures in the speedy implementation of service delivery programmes, it explains why when he ascended to the helm as Premier under President JZ Zuma, he deliberately undermined legal processes in government, in particular, procurement processes.

33. Magashule mastered the art of knowing the key officials in local municipalities to the extent that he would know of the existence of a vacancy of an elementary worker like a receptionist and the projects that are to be undertaken by all municipalities in the Free State. Magashule made it his business to even know all the key municipal officials such as Municipal Managers and Chief Financial Officers of the municipalities in the Free State.

34. It was the same with provincial departments. Armed with information regarding vacancies in municipalities and various provincial departments, it was easy for

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Magashule to dispense patronage. For example, in the department of Police, Roads and Transport, two known priests who are close to Magashule are employed in the following positions:

34.1. Rev/Mr Daniel Mothobi Lekota, as Deputy Director: Research. He was born on 31 July 1948 and his appointment date in this position was effective from the 1st August 2015 at the age of 67. Moruti Lekota is a known priest with a regular slot on Lesedi FM. His persal number is: 8224284401.

34.2. Rev/Mr LI Mothibi, as Assistant Director: Administration. He was born on 20 July 1959 and his appointment date to this position was effective from the 1st December 2016 at age 57. His persal number is: 2172310901.

35. For ease of reference, I annex hereto marked **"2DM 3"** and **2DM 4"** copies of their salary enquiries dated 10 June 2019.

36. I deal with the said projects in the following sequence:

36.1. Asbestos eradication audit;

36.2. Department of Human Settlement;

36.3. The role of Blackie Seoe;

36.4. Operation Hlasela;

36.5. Media and Communications (Procurements);

36.6. Executive Council Meetings;

36.7. Sanitising forensic reports;

36.8. International scholarship programme; and

36.9. Conclusion.

D. ASBESTOS ERADICATION AUDIT:

ASBESTOS HEIST

37. The Free State Department of Human Settlement ("the FSDHS") obtained an unsolicited proposal to eradicate asbestos roofs on houses within the province from Blackhead Consulting and Diamond Hill JV.

38. The history of asbestos and its health hazards are known apartheid spatial development legacy. It is therefore apposite that I speak about this project by making reference or taking the Commission through a 53-paged document that resulted in the unlawful and corruptly spending of approximately R255m by the FSDHS. I annex hereto marked **"2DM 5"** a copy of the final audit report prepared on behalf of Blackhead Consulting and Diamond Hill JV by Mr IP Mpambani (Mr Mpambani).

39. Unfortunately, Mr Mpambani was mercilessly gunned down in Sandton on 22 June 2017. I knew him well as a young man educated abroad and a potential talent for the benefit of the country.

40. Although he is late, his business partner, one Mr Edwin Sodi (Mr Sodi), is alive and should be subpoenaed by the Commission to explain the genesis of this project.

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There are legal proceedings instituted against the estate of Mpambani by Sodi at the High Court, Gauteng Local Division, Johannesburg. I understand that the amount in issue is the last payment of R77m (part of R255m) that was advanced by FSDHS to Black Consulting and Diamond Hill JV and unduly appropriated by the late Mr Mpambani. It would be in the interest of the Commission to obtain from the High Court papers concerning this litigation.

41. First of all, there was no compliance with s 217(2) of the Constitution by the FSDHS in its approval of this project. On 2 December 2014, Mokhesi (HOD of Free State Human Settlement) addressed a letter Sodi appointing Blackhead Consulting (Pty) Ltd JV to perform the audit and assessment of asbestos of housing units in the Free State for R 255m. The period to undertake the audit and assessment of asbestos of housing units was between 1 December 2014 to 31 March 2015 or earlier. I annex hereto marked **"2DM 6"** a copy of the appointment letter and **"2DM 7"** being a copy of the service level agreement.

42. The letter of appointment followed a 5-paged proposal from Sodi dated 28 May 2014 for the **"REQUEST FOR APPOINTMENT ON RISK: AUDIT AND ASSESSMENT, HANDLING OF HAZARDOUS MATERIAL (REMOVAL) AND DISPOSAL OF ASBESTOS-CONTAMINATED RUBBLE IN THE FREE STATE PROVINCE"**. For ease of reference, I annex hereto marked **"2DM 8"** a copy of the proposal that culminated in the Free State government paying **R255m for a 5-paged proposal.**

43. This project was a brazen act of corruption executed by state officials in concert with business persons at the behest of the Premier of Free State, Magashule at the time.

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44. Mr Mpambani was in constant communication with the personal assistant of Premier Magashule, one Ms Moroadi Cholota (Ms Cholota). Ms Cholota would communicate on behalf of Magashule onerous requests or instructions with substantial financial implications no business entity could sustain in its commercial well-being. For ease of reference, I annex hereto marked **"2DM 9"**, **"2DM 10"**, **"2DM 11"**, **"2DM 12"**, **"2DM 13"** as copies of the emails between Ms Cholota to Mr Mpambani. It would be noted that in some of the emails, one Ms Ipeleng Morake (Ms Morake) from the Office of the Premier features prominently in executing instructions on behalf of Magashule via Ms Cholota.

45. It is apparent from the emails between Ms Cholota and Mr Mpambani that payments were advanced for every onerous request that was made to Mr Mpambani on behalf of Magashule. As evinced in the said emails, at all material times thereto, the official emails of Ms Cholota and Ms Morake were used to communicate requests and acknowledge payments of monies and executing instructions at the behest of Magashule.

46. An inference could be drawn that each time payment was advanced to Blackhead Consulting JV by the FSDHS, Ms Cholota or Ms Morake were informed, undoubtedly both would inform Magashule, followed by an onerous request or instruction to Mr Mpambani, resulting in the latter making payments as requested or instructed by Magashule.

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47. Magashule was simply a **"blesser"** to many, due to payments advanced by Mr Mpambani from monies corruptly and fraudulently sourced from the state coffers through the asbestos project. At the behest of Magashule, Mr Mpambani paid sums of monies for some students studying through various universities here and abroad.

48. A notable request is that of one Ms Refiloe Mokoena, who at some point was an Acting Judge at the High Court, Free State Division, Bloemfontein. Her financial request was for her daughter who was studying abroad. At the behest of Magashule, Ms Cholota communicates to Mr Mpambani and Ms Mokoena's request was honoured in dollars.

49. Ms Mokoena is a suspended Head of Legal Department at SARS and I am advised her suspension is allegedly connected to advancing the interests of the Gupta owned entities.

50. Evinced from the emails between Ms Cholota and Mr Mpambani, all the requests or instructions originated from Magashule. An inference could be drawn that the asbestos audit was but an asbestos audit heist sponsored by the Premier of the Free State government (Magashule). The asbestos audit heist was executed through the Premier's office by Magashule's personal assistant employed by government at the behest of Magashule. This was not only a blatant abuse of power by Magashule but a brazen commission of fraud, money laundering and day light robbery of the public purse.

51. Mr Sodi, as business partner of Mr Mpambani, owes this Commission and the people of Free State a detailed account of how he financially benefited from this asbestos audit heist. Mr Sodi as a business partner to Mr Mpambani ought to have known some of the intricacies involving this cash heist committed at the constructive knowledge of Magashule as Premier of the Free State at the time.

52. To demonstrate that Mr Sodi knows about this asbestos heist the following is noted

52.1. On or around 24 March 2015, Mr Sodi and Mr Mpambani exchanged emails regarding persons who have been paid form this asbestos heist and they termed the payments as "costs of business".

52.2. I annex hereto marked **"2DM 14"** a copy of the spreadsheet as an attachment to emails exchanged by Mr Mpambani and Mr Sodi.

52.3. From the spreadsheet the following persons were paid according to emails between Mr Mpambani and Mr Sodi:

52.3.1. TZ is believed to be Mr Thabane Zulu who at the time was the Director-General of National Department of Human Settlement;

52.3.2. TM is believed to be Mr Thabo Mokhesi who is the Head of Department of Human Settlement in the Free State;

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52.3.3. AM is believed to be Ace Magashule who was Premier of Free State at the time;

52.3.4. OM is believed to be Olly Mlamleli who was the MEC for Corporative Governance and Human Settlement in the Free State;

52.3.5. Mastertrade is believed to be a company domiciled in Gauteng (the Commission's investigators can make further investigations about its details);

52.3.6. Others are unknown persons;

52.3.7. Martin is unknown;

52.3.8. Steve is unknown;

52.3.9. Ranta is unknown;

52.3.10. JT is unknown but is believed to be Jimmy Tau;

52.3.11. Diedricks is unknown; and

52.3.12. Blackhead and Diamond Hill (have already been described).

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53. I submit that the involvement of Magashule in this asbestos audit heist makes him unfit to hold public office or the office of the Secretary-General of the ANC. Magashule's suitable place of abode in public is a jail cell. If our law enforcement agencies were well-oiled, Magashule and all those aided and abetted this asbestos audit heist should be doing time in jail.

54. To date, no eradication of asbestos roofs has been carried out in any township in the Free State to asbestos roofed houses and yet R255m has been advanced to Blackhead Consulting JV and R77m of the state funds is a subject of a litigation in our courts and our law enforcement agencies are doing nothing.

55. I invite the Commission to investigate and subpoena the Head of the Department of FSDHS, Mr Thabo Mokhesi, the Chief Finance Officer of FSDHS at the time, the head of supply chain at FSDHS and the MEC of Human Settlement at the time.

56. Magashule, as Premier at the time, Ms Cholota and Ms Morake should be no exceptions. The MEC of Finance in the Free State at the time and Head of Treasury at the time have some explanation to do.

57. Ms Mokoena should come to the Commission to explain the circumstances that led her to request funding from Magashule for her daughter's education abroad.

58. The office of the Auditor-General in the Free State would be a great resource to the Commission. The Commission and the people of South Africa, in particular the Free State deserve to know the truth about this asbestos audit heist.

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59. The Commission would also do well to subpoena government officials who were at the helm at the time at the National Department of Human Settlement:

59.1. Minister of Human Settlement;

59.2. Director-General of Human Settlement;

59.3. Chief Financial Officer of Human Settlement; and

59.4. Any other official with the knowledge of the project in issue.

60. I must state that I am not suggesting that the persons at the National Department of Human Settlement cited above were involved in the asbestos audit heist. Methinks the asbestos audit heist would not have occurred without their knowledge.

61. What begs the question is: Why this project was "undertaken" only in the Free State? Asbestos roofed houses are found in all provinces. If in the Free State alone, R 255m was spent for a purported asbestos audit, how much of the amount was from the national public purse via the National Department of Human Settlement. I have a reasonable believe that the Free State government under Magashule was the only fertile ground in the country for this asbestos audit heist to be staged and executed.

62. The Commission should also commission an audit to be conducted on any payments made from Blackhead Consulting JV to any person(s) or private entities. Further, the Commission ought to investigate if ever there were municipalities and other organs of state in the Free State that were contracted to either Blackhead Consulting or Diamond Hill JV.

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63. I have made reference to the pending litigation before the High Court involving R77m, being the last tranche of R255m paid from this asbestos heist in which Sodi is an applicant. The Commission would note that the FSDHS has not intervened in those proceedings to recover the monies unduly and unlawfully obtained by the parties to the dispute in the said proceedings. Neither the Special Investigating Unit ("the SIU") nor Free State Provincial Treasury has intervened.

64. I am advised that the pending litigation in issue, involves the fruits of a poisoned tree. It is startling that there is no intervention of the law enforcement agencies in the said proceedings. It is also startling that the National Treasury is not involved as it is charged with the management of the national purse.

E. DEPARTMENT OF HUMAN SETTLEMENT

I) HOUSING HEIST

65. During November 2010, Mr Tokyo Sexwale (Mr Sexwale), who was the National Minister of Human Settlement at the time, threatened to take away money from the Free State Provincial Government, in particular from the FSDHS as it had not been spent for delivery of houses to our indigent persons. To my recollection, Mr Sexwale had a national plan to renovate many RDP houses who were badly constructed and not suitable or safe for human habitation.

66. Faced with a threat from Mr Sexwale which was within the law, Mr Mosebenzi Zwane (Zwane), who was the MEC of Human Settlement in the Free State at the time, intimated to the Free State Executive Council that he would be working during the December holidays to remedy the situation to avoid the any money returning to the national department due to failure to spend it in service delivery of houses in the Free State. At the time, only 10% of the allocated more or less R 1bn was spent.

67. Through that commitment by Zwane, service providers, some of which had no expertise in building of houses, let alone registered with the NHRBC were paid in advance millions without compliance with any public procurement prescripts. There is a court case about this matter that has since been withdrawn. For ease of reference, I annex hereto marked **"2DM 15"** a copy of the court order indicating that the matter has been withdrawn by the applicant.

68. Fortunately, my legal team has been able to obtain the application to review and set aside the corrupt scheme conceived by Zwane and undoubtedly at the behest of Magashule. In the said application, the HOD of the Human Settlement in the Free State, Mokhesi deposed to a very lengthy affidavit and I am advised I should read the same into the record as annexure **"2DM 16"**.

69. I understand that the Hawks in the Free State were not acting on this probe and the matter is now at the national office.

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70. Zwane must explain to the Commission the extent of his work during December 2010 holidays and how the service providers were identified and why they were paid in advance without any procurement procedures followed.

71. It must be noted that in the application, the SIU deposed to a confirmatory affidavit and yet the SIU has not in terms of its powers moved swiftly to recover the public monies appropriated unlawfully by those involved. For ease of reference, I annex the SIU confirmatory affidavit as **"2MD 17"**.

72. To my knowledge and recollection, through this housing heist, no houses were either renovated or built to this day. Zwane needs to explain as the former executive authority of the department his role in this housing heist. Where are the houses renovated and/or built? What happened to millions of tax payers money?

73. The government of Free State must explain why it withdrew the application in issue?

II) HOUSING HEIST THROUGH IMPLEMENTING AGENTS

74. The FSDHS was always inclined to use implementing agents. The *modus operandi* was in some instances to use either a provincial entity or private company. Free State Development Cooperation ("the FDC") was always a preferred vehicle to advance the heist of any sort.

75. To my recollection, Ms Hantsi Mayeza (Ms Mayeza) is the Chairperson of the FDC. Ms Mayeza had a company whose commercial interests were to build low cost

houses and at some point, her company was awarded a contract to build 800 to 1000 units in Vrede, the hometown of Zwane. There was a clear conflict of interest in the transaction.

76. The FDC as an implementing agent for housing projects had no legislative mandate to be involved in any venture of building houses for human settlement in the townships of Free State province.

77. Mokhesi, the very same HOD of the FSDHS, was a board member of the FDC. In essence, the HOD had surrendered the legislative mandate of his department to an implementing agent such as the FDC whilst he was a board member at FDC.

78. There was also a company called Mafure with links to Ms Thoko Alice Malembe (Ms Malembe), the daughter of Magashule. There was also a company called Unital Holdings (Pty) Ltd (Unital Holdings) with its principal place of business in Wynberg, Johannesburg. Mr Lianliang Li (Mr Li) and Ms Malembe are directors of this company. For ease of reference, I annex hereto marked **"2DM 18"**, a copy of the NHBRC form proving the directorship. Both Mafure and Unital Holdings benefited from the housing heist in the Free State.

79. Mr Li and Ms Malembe's company, Unital Holdings, benefited immensely from another housing heist in Vogelfontein, Bethlehem. I invite the Commission to send its investigators to ascertain if ever there were any houses built by Unital Holdings for the people of Bethlehem. Mr Li and Ms Malembe also benefitted from building of low-

cost houses in Virginia, Wesselsbron and Bothaville. As to whether the houses were built in those area is outside my ken.

80. The *modus operandi* of the housing heist was simple in the Free State. The FSDHS awards a housing contract to build certain number of units, not one unit is built and the Free State government would do no follow up to ensure that monies from the public purse are accounted for in compliance with the PFMA. In some instances, houses would be built and not completed and would be handed over to a new contractor to complete.

81. Alternatively, the FSDHS would appoint an implementing agent, advance millions to the implementing agent and the latter would appoint service providers to "build" houses. In many instances, the directors of the companies rendering services in this regard would be persons politically associated to Magashule.

82. To advance the implementing agency, the first culprit would be a total disregard of procurement procedures. A state official would be armed with in most instances, a badly authored proposal, and on an urgent basis, the importance of the project is given prominence and payments are made in advanced.

83. There is a company called Major Bricks owned by Mr Jackie Gao (Mr Gao). I understand that all the low-cost housing contractors building and involved in the RDP housing projects are encouraged to buy bricks from this company. The Major Bricks was also used in Virginia project.

84. It needs to be emphasised that the implementing agency scheme in the Free State was operating in various departments and municipalities. Central to it was to transfer monies outside government department to an entity that would purportedly execute a project. Once the funds have been placed with an implementing agent, the latter appoints without a due process service providers and that is the beginning of the distribution of sharing ill-gotten tax payers money. The feast commences and the indigents bear the brunt of those whose time it is to eat.

85. But the caveat was that looting of the public purse at a scale inexplicable has to be carried out to advance corrupt interests of politicians such as Magashule, Zwane and others. Mr Li has close links with Magashule. I cannot rule out the possibility that Mr Li and Ms Malembe's business ventures were facilitated and blessed by Magashule. It would be interesting to learn how Mr Li got to know Ms Malembe.

86. I invite the Commission to investigate their business relationship and the circumstances that led to the government resorting to implementing agency scheme for service delivery purposes.

F. THE ROLE OF BLACKIE SEOE

87. According to my knowledge and recollection, at one stage Mr Blackie Seoe (Seoe) was the Chairperson of the FDC. During his term as Chairperson, the FDC disposed of many of its the properties. Some of the properties that were disposed off by the FDC ended up in the hands of persons such as Seoe and Mr Glen Netshivhodza

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(Netshivhodza). As evinced in the application (**2DM 16**), the latter was a beneficiary of the housing heist.

88. Magashule and Seoe come a long way. Mr Seoe and Magashule were partners in a company by the name of **Sambal**. Immediately when Magashule became the MEC for Sports and Recreation in the Free State Province, he resigned as Director of Sambal, but that the company was still being run by the children of Seoe.

89. Magashule gave instructions to government officials that no contracts on properties would be executed without the approval from the Office of the Premier. The acquisition of private properties leased by government was a property heist of note. In this regard I am aware of four instances where **Robs Investment** bought a building for about R 26 m or R 29 m. The Robs Investments, which is a holding company of Robs Properties would then sell the same building for about R 68 m.

90. Robs Promotions, is also one of Seoe's companies, which received a lot of business from the Department of Sports and Recreation in the Free State, when Magashule was the MEC. Robs Promotions were the biggest boxing promoters for that Department from 2005 to 2008.

91. I am also aware of instances where Robs Properties approached the Free State Government for a long-term lease agreement at high tariffs. Once the lease agreements are secured, Robs Properties would then approach a bank to take out a bond on the properties.

MN

92. Ms Mosidi Lydia Motsemme (Motsemme) is a former employee of the Free State Legislature. At the time I was relieved of my responsibilities as MEC for Economic Development, Tourism and Environmental Affairs, Motsemme was an employee of the legislature charged with the responsibilities of rendering assistance to members of the legislature. Motsemme has since resigned from government and the Free State Legislature, her former employer, rents offices at Southern Plaza building in which Motsemme has shares.

93. I must state I was Motsemme's class teacher at Rearabetswe High School at Kutloanong, Odendaalsrus. Motsemme's acquisition of shares at Southern Plaza building and her vast business interests ought to have been facilitated by Seoe at the behest of Magashule.

94. Motsemme and Magashule are parents to three children and they share the same place of abode in Bloemfontein. I doubt that it is a success story that a former employee of the Free State Legislature is now a land-lady to her former employer. I submit that Motsemme's relationship with Magashule is the reason for her unexplainable wealth.

95. I recall that Magashule once remarked that he was particularly interested in the properties where government departments were leasing properties. Magashule stated that the said leases should neither be extended nor renewed, rather, they should be operated on a month-to-month basis. In this way, property owners would be forced to sell their properties. I believe the new owners of the sold properties would be funded by either the Investec and/or Nedbank. I am not sure if Motsemme's

acquisition of shares in Southern Plaza building was financed by any of the two banks. I leave that to the Commission to investigate.

G. OPERATION HLASELA

96. During 2009, there was a centralisation of government functions to the Premier's office called: ***Operation Hlasela.*** Magashule stated that Operation Hlasela was meant to facilitate **good governance, effective leadership, effective service delivery, coordination of activities** to make sure that services are delivered. Instead it ended up ensuring total control of public procurement Magashule.

97. For example, when going to a "Hlasela event", there would be a team before the event, who would assemble a list of projects which needs to be implemented in the area, whether housing, building of a school, opening of a clinic etc.

98. There would then be one day where senior officials, including the Premier and MEC's would go to an area to get an outline of what would need to be implemented. As a general rule, these events would happen after approval of the provincial budget and thus MECs would commit themselves at such event to projects not included in their budgets which would lead to projects being implemented without proper processes being followed. This was one of the main ingredients for corruption and justification for implementing agents.

MD

99. During late 2009, the Premier (Magashule) and MECs visited a church called Tyrannus Apostolic Church in Bloemfontein. The church had a banner with the words **"Operation Hlasela"**, which was a project by the church to get 1 million church members by December 2009. The Premier then asked for permission to use the name Operation Hlasela in order to attack poverty, corruption etc, in the Province, which then resulted in the centralisation of all functions to the Office of the Premier

H. MEDIA AND COMMUNICATIONS (PROCUREMENT OF NEWSPAPERS)

100. As regards to the procurement of newspapers as well as determination of where Government advertisement would be placed, this aspect was controlled by the Office of the Premier.

101. Once under the control of the Premier, the Province started procuring The New Age (TNA), a Gupta owned newspaper. TNA was acquired *via* communications under what was called bulk buying of newspapers. Mr Tumi Ntsela, of Letlaka Media was also involved in Communications of the Province.

102. There was also a newspaper called the Weekly, which was the beneficiary of Government advertisement business and the said paper used to feature flattering articles about Magashule. The Weekly was simply a *de facto* mouth piece of Magashule.

MD

I. EXECUTIVE COUNCIL MEETINGS

103. Usually at Executive Committee ***(Exco)*** meetings, report that are tabled would have been discussed and processed by cabinet committees and would have been verified at the technical level by officials from various departments. This was to ensure that the Exco discussed reports and presentations that have been thoroughly processed and their alignment to government projects and plans have been ascertained.

104. From 2009, after Magashule became Premier, the practice as we have known it changed. Magashule would first meet with private companies and following his meetings would invite the said companies to make presentations to Exco that was extended to include HODs and CFOs.

105. Essentially, private companies would be pitching or seeking funding from government and in most instances for services government had the capacity to render to citizens. Through the line of questions and presentations, one could conclude that the presenters had some prior engagement with Magashule. These presentations would take the better part of the day and in the afternoons, members of ECXO would convene as EXCO to process its business.

106. I must point out that as EXCO members we had taken oath of office and were dealing with the state affairs and at times private individuals who were not in government would sit throughout EXCO meetings.

MD

J. SANITASING FORENSIC REPORTS

107. This is a forensic entity called Ramathe/Fivaz. Whenever there would be a controversy at a municipality or an audit report with an adverse outcome, Magashule would appoint Ramathe/Fivaz to sanitise the said report that implicated whoever linked to him.

108. Ramathe/Fivaz as partners had a fallout and Mr Fivaz formed Openwater Forensics. The Commission needs to subpoena both Misters Ramathe and Fivaz to come and explain their roles in sanitising reports adverse to Magashule and his cronies.

K. INTERNATIONAL SCHOLARSHIP PROGRAMME

109. There is what is called international scholarship programme whose intention is to pay for students from Free State to study abroad.

110. I suspect that this programme, is a way of taking money out of the country, under a guise that the Government is paying for students to study abroad. The students are being paid around **R 8,000.00** per student per month. There is no regulation or verification done, to determine whether the number of students being paid for, is indeed the number of students studying abroad.

111. I am advised that some of the properties where the students are housed outside the country belong to certain officials. This programme is controlled from the Premier's Office.

112. Some of the students benefitting from this programme are people who are close to government officials, including the daughter of Ms Mamiki Qabathe, MEC for Social Development and former HOD of department of Agriculture Mr Thabethe to mention a few.

113. No proper due diligence was done on institutions that students are sent to and other institutions end up not being accredited by International Boards. For example, there is an institution in Turkey, where students were sent to study Medicine. It was then discovered that students cannot carry on with their studies as the institution was not an accredited institution.

114. This programme is also a corrupt activity. Free State government, in particular the Premiers Office as recent as 17 May 2019, authorised the payment of R 893 182. 58 to BAU University in Washington DC for the benefit of government employees, Ms Sheila Mazibuko and Ms Mbali Nangu. For ease of reference, I annex hereto a memorandum approved by the Mr Kupung Ralikontsane, Director-General of Free State marked **"2DM 19"** for the payment to BAU via the Department of International Relations and Cooperation (DIRCO).

MD

115. BAU University originates from Turkey and has various branches all over the world. This is the same institution that awarded an honorary doctorate to Magashule in September 2017.

116. It is mind boggling why DIRCO, an important department which is a face of the country at an international level is dragged in a corrupt enterprise involving corrupt activities staged in Free State.

L. CONCLUSION

117. Being well-versed in the Free State affairs and how corruption is concealed, I anticipate that it would be tad difficult for the Commission to get any cooperation from the Free State government unless the President of the Republic act in terms of s 100 of the Constitution and put the entire province under administration. In this way, a multidisciplinary team of untainted and independent professionals with no links to Magashule and his network will be in charge of the government affairs and render assistance to the Commission.

118. The principal aim of the team would be to audit every contract in the government departments, state entities and municipalities in the Free State. Without such assistance or intervention, I am afraid to state that the Commission would be constrained in its performance of its constitutional obligation.

MD

119. I have spoken to a number of government officials in the Free State province and they are eager to provide information or render assistance to the Commission. Their only fear is that there is no independent vehicle through which they could be of assistance to the Commission.

MXOLISI DUKOANA

I hereby certify that the deponent knows and understands the contents of this statement and that it is to the best of the deponent's knowledge both true and correct.

COMMISSIONER OF OATHS

TAKALANI MADIMA (S.C)
Practising Advocate
AFSA JHB Chambers
Commissioner of Oaths Ex Officio
Grindrod Tower, 8A Protea Place
Sandown 2193
Tel: 011 320-0600

27 June 2019

MD-SUP-035

35

"ZDM1"

Mashala • Komane • Masekela Inc.

ATTORNEYS

MR ELIAS SEKGOBELO MAGASHULE
LUTHULI HOUSE
54 PIXLEY KA ISAKA SEME STREET
JOHANNESBURG
2001

OUR REF: MR MASHALA/MD0024/18
YOUR REF: MR E S MAGASHULE
DATE: 09 APRIL 2019

PER EMAIL: PMASEKO@ANC1912.ORG.ZA

Dear Sir

RE: SERVICE OF COURT PAPERS AGAINST MR MXOLISI DUKWANA

1. We act for and on behalf of Mr. Mxolisi Dukwana ("our client") who on 5 April 2019, testified at the Commission on State Capture before the Deputy Chief Justice Raymond Zondo.

2. Our client learned through the media that you intend approaching the courts in relation to his testimony at the commission and instructs us to receive all the correspondence and/or court papers on his behalf.

3. We urge you to direct any correspondence and/or serve any court documents to us.

4. We trust you will find the above in order.

Yours sincerely

Mmami Rathidili
Obo
Stanley Mashala

MD-SUP-036

"ZDM2"

From: "Pule Maseko" <pmaseko@anc1912.org.za>
Sent: Wednesday, April 10, 2019 9:38 AM
To: mmami@mkmlaw.co.za
Subject: RE: Letter to Mr. Magashule

Good Moring Mam

Kindly take note that the office of ANC SG Cde Ace Magashule has received your email on 10 April 2019

From
Pule Maseko
PA of the ANC SG
011 376 1000/7020

From: mmami@mkmlaw.co.za [mailto:mmami@mkmlaw.co.za]
Sent: Tuesday, 09 April 2019 17:07
To: pmaseko@anc1912.org.za
Subject: Letter to Mr. Magashule

Good day Sir

Attached please find correspondence for your attention.

Kind regards
Mmami Rathidili
Obo
Mr Stanley Mashala

MD-SUP-037

57

"2DM3"

PF12=ACCOUNT HOLDER DETAILS
PERSAL NUCP SALARY ENQUIRIES:FREE STATE POLICE RO 2019-06-10
5.06.04(02) HISTORY - BASIC INFORMATION 10:10:32.4

X10148

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SAL-EFF-DAT..: 20190531 SEC. ORGANISATION:
ORGANISATION.: FREE STATE POLICE RO REG SERV COUNCIL.: 3
STATUS.......: CURRENT RACE.............: AFRICAN
STATUS REASON: CURRENT GENDER...........: MALE
STATUS DATE..: MARITAL STATUS...: MARRIED
PAY GROUP....: TEMPORARIES P. SERV. NOTCH DATE.......: 20190401
NOTCH/TARIFF.: 1023645.00 265 IDENTITY NUMBER..: 4807315577084
PAY METHOD...: DEPOSIT - CURRENT NATURE OF APPT...: CONTRACT
INSTITUTION..: ABSA APPOINTMENT ACT..: PSA 1994
MAIN BRANCH..: 632005 ABSA ELECTRONIC SETT F/P.: FULLT
ACCOUNT NO...: 9134212394 SALARY LEVEL.....: 12
DATE OF BIRTH: 19480731 APPOINTMENT DATE.: 20150801
DAYS/HOURS...: REGION/PAY POINT.: 0001 / 500000
DEDUCTIONS...: 34334.25 PROBATION PERIOD.:
NET SALARY...: 50969.50 RANK TYPE........: 6 MMS PROF.(70.00%)
NOTCH CODE...: 024 NORMAL
SCALE CODE...: 0130241(869007-1023645)
CHOICE: _ (2=ALLOW.;3=IRP5;4=OBJECTIVE;5=ADDITIONAL;6=TAX;7=DEPEND.;8=MEDICAL)

MD-SUP-038

"2DM4"

PF12=ACCOUNT HOLDER DETAILS
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5.06.04(02)   HISTORY - BASIC INFORMATION   10:09:51.6

X10148

PERSALNO...: 21723109 01   LI MOTHIBI   ASS DIR:ADMIN
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SAL-EFF-DAT..: 20190531   SEC. ORGANISATION:
ORGANISATION.: FREE STATE POLICE RO   REG SERV COUNCIL.: 3
STATUS........: CURRENT   RACE.............: AFRICAN
STATUS REASON: CURRENT   GENDER...........: MALE
STATUS DATE..:   MARITAL STATUS...: NEVER MARRIED
PAY GROUP....: TEMPORARIES P. SERV.   NOTCH DATE.......: 20190401
NOTCH/TARIFF.: 376596.00   264   IDENTITY NUMBER..: 5907205783088
PAY METHOD...: DEPOSIT - CURRENT   NATURE OF APPT...: OFFICER: PERM PROB
INSTITUTION..: STANDARD BANK   APPOINTMENT ACT..: PSA 1994
MAIN BRANCH..: 55034 BLOEMFONTEIN   F/P.: FULLT
ACCOUNT NO...: 146342623   SALARY LEVEL.....: 09
DATE OF BIRTH: 19590720   APPOINTMENT DATE.: 20161201
DAYS/HOURS...:   REGION/PAY POINT.: 0001 / 233000
DEDUCTIONS...: 11509.93   PROBATION PERIOD.: 24
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"ZDM 3" 38

MD-SUP-039

blackhead CONSULTING

Diamond Hill Trading 71

FREE STATE PROVINCE: ERADICATION OF ASBESTOS AUDIT REPORT: ALL TOWNS

FREE STATE PROVINCE

FREE STATE DEPARTMENT OF HUMAN SETTLEMENT

FREE STATE: DEPARTMENT OF HUMAN SETTLEMENTS

FINAL AUDIT REPORT

ERADICATION OF ASBESTOS ROOFS ON HOUSES WITHIN THE FREE STATE PROVINCE + 300 000

13 FEBRUARY 2015

PREPARED FOR:

Head of the Department.

Free State: Department of Human Settlement.

C/o St Andrew and Markgraaf Street
Lebohang Building
8th Floor, Room 834
Bloemfontein
9300

PREPARED BY:

Mr. I P Mpambani

Blackhead Consulting JV

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TABLE OF CONTENTS

ACRONYMS AND DEFINITIONS

Acronyms and definitions will have the meanings as specified herein for the purpose of understanding the context and contents of this document only.

1.1. Acronym

PRT	BLACKHEAD CONSULTING JV (Professional Resource Team)
PM	Project Management
PBS	Product Breakdown Structure
PP	Project Plan
PI	Professional Indemnity
TBD	To Be Determined
WBS	Work Breakdown Structure
WP	Work Package
FSPG	Free State Provincial Government

Executive Summary

Project Background

Blackhead Consulting and Diamond Hill formed a Joint Venture and were appointed by the Free State Department of Human Settlement as Blackhead Consulting JV to assess and quantify the entire stock of low density residential housing accommodation roofed with asbestos in the Free State Province with the ultimate aim of eradicating these asbestos roofs.

The assessment results will enable the Department to formulate a plan to replace the affected roofs with environmentally friendly roof covering to guarantee the citizens of Free State a healthier livelihoods and an improved quality of life.

Methodology

Blackhead Consulting JV was elected to use a Global Positioning System of geo-referencing of stands that is web-based. This system is premised on mobile devices (tablet PCs), GIS software packages, GPS system and ArcGIS Server Mobile SDK, riding on wireless communication and a spatial database. .

Field workers within the area of works were trained and employed to take the images of asbestos houses using mobile devices, which in turn synchronises with the Mastartrade232 server to store the images, which are then processed and quality controlled via a Structural Assessment template. The whole system then later generates individual reports for each house, which is then analysed and interpreted for results. A hard copy of the houses containing asbestos will be made available to the Department, however, the information submitted on hard copy will also be available electronically.

Field findings

Out of a total of all the Free State townships assessed via site visits, The following were discovered.

The actual number of residential units that contains asbestos could only be quantified after the physical audit has been done, however the audited and counted number of residential units containing asbestos is **36 303** Stands and the stands walked and physically and assessed is **+300 000**.

Options to cater for repairs will be developed in detail on phase two of the works, however recommendations highlighting the advantages and drawbacks of each option is indicated as follows.

A preliminary cost for each option will also be developed. Typical house-plans (generic) which have been used mostly in the areas will captured per District Municipality and used to develop the preliminary cost estimate for each option.

1. PURPOSE OF THIS REPORT

The purpose of this report is to make information available to the Free State Provincial Government regarding number of houses that contains asbestos and to give an indication on the structural status of the units per stand within the allocated scope of 300 000 residential stands as follows:

- The number of Residential Units per stand that contains Asbestos Roof.
- The type of existing roof.
- Existing house typologies.
- Defects documented.
- Repairs for remedial work.
- Estimated value of the remedial works
- Recommendations

94

2. INTRODUCTION

The bill of rights in the supreme legislation of South Africa, the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996), Sections 26 entrenches the right of South African citizens to have access to adequate housing.

The Constitution makes it incumbent upon the State to take reasonable legislative and other measures within its available resources to achieve the progressive realization of this right.

The Free State Provincial Government has tasked the Free State Department of Human Settlements to embark on a project to eradicate asbestos roofs from all housing accommodation in Free State.

Health implications associated with exposure to airborne asbestos fibres were first highlighted in the 1930's and specific links to certain cancers were made in South Africa in the early 1960s, however products containing asbestos continued to be used in housing for non- white South Africans during the Apartheid era.

Old township houses that were built by the previous era have subsequently been transferred into the ownership of the inhabitants. This property transfer also meant the transfer of risks and liabilities that come with home ownership.

The health risk of living in asbestos roofed houses was thus also transferred to the beneficiaries of these properties. A very large number of such houses were transferred to indigent people who rely solely on Government Pensions, Grants and a number of other forms of Government assistance. They thus hardly have money for home insurance or money for maintenance and repairs to their properties let alone money to replace the entire roof structures to protect themselves and their families from diseases caused by exposure to asbestos fibre.

3. BACKGROUND

In 2008 the Government of South Africa banned the use of asbestos sand asbestos fibre in any product. This ban was a reflection of the commitment of the Government to creating better lives for the people of South Africa.

As a component of this commitment the Free State Provincial Government (FSPG) acknowledges that a large number of township houses, hostels and flats delivered by the government of the past were roofed with asbestos roof sheets.

Regulations for the prohibition of the use, manufacturing, import and export of asbestos and asbestos containing materials formed part of the Environment Conservation Act of 1989.

FSPG has looked at its financial position and has tasked the Department of Human Settlements to conduct an audit on housing stock roofed with asbestos / products containing asbestos fibre per residential stand. The audit will allow us to quantify the entire stock in the Province which will enable us to devise a plan and cost to replace the affected roofs with environmentally friendly roof covering to guarantee the citizens of the Free State Province a healthier livelihoods and an improved quality of life.

The terms of reference for assessment of asbestos roofed houses/ stand will provide guidance on efforts aimed at appropriate planning, process management and replacement of affected roofs in the province. The strategy will further assist in building and strengthening strategic relationships with municipalities in Free State

Access to quality, sustainable housing is entrenched in our Constitution and Breaking New Ground Strategy and thus is an important aspect of redressing (deliberate) deficiencies of the past in our country.

4. LEGAL IMPLICATIONS

The Department is aware that the roll out for the asbestos eradication project has the possibility to open us up to opportunistic litigation based on possible health conditions. These cases can be highly sensitive and the issues can be factually and legally immensely complicated.

In anticipation of this the Department will use existing legal structures to assist when such cases arise. The services of a reputable legal firm preferably with experience in this area of asbestos related litigation should be sought.

It is beyond reasonable doubt that the Free State Government is being pro-active in addressing this matter, of which the assessment of residential units per stand containing asbestosis is the first step to stop the prolonged damage caused by asbestos and potential damaged that can be caused by asbestos if not removed and disposed correctly.

5. UNDERSTANDING OF THE BRIEF

5.1 Scope of Works

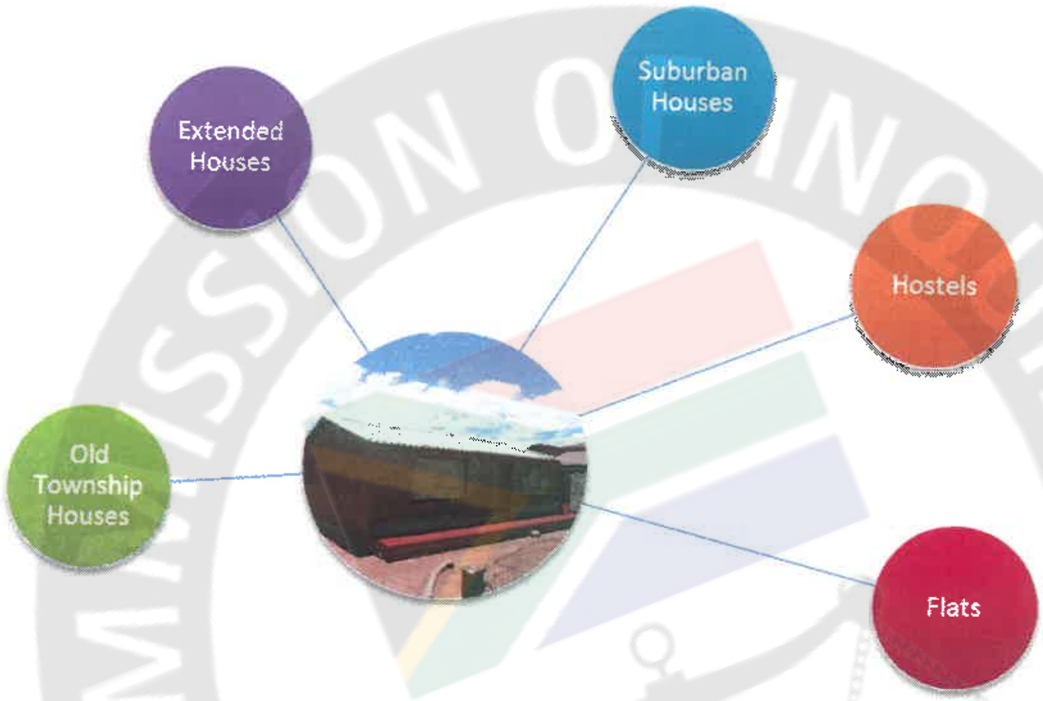
The scope of works is the assessment audit of residential units per residential stand containing asbestos, including outside toilets roofed with asbestos and to submitting a report on all houses in the Province that are roofed with asbestos complete with Geo referencing, remedial works needed and to give an indication of the estimated value of the replacement cost.

5.2 The scope of the assessments will be as follows:

- The identification and quantification of affected houses.
- Assessment of structural defects on load bearing walls in each houses.
- Submission of existing House Typologies in the area (for new roof designs)

5.2.1) The assessment has encompass all housing products roofed with asbestos roofs with focus on the following housing products as indicated on the below figure.

- Old township houses (including former Indian & Coloured townships)
- Extended Houses
- Suburban houses
- Outside toilets or other structures containing asbestos within the residential stands



5.2.2) The assessment has encompass the entire Province of Free State in all cities and towns,

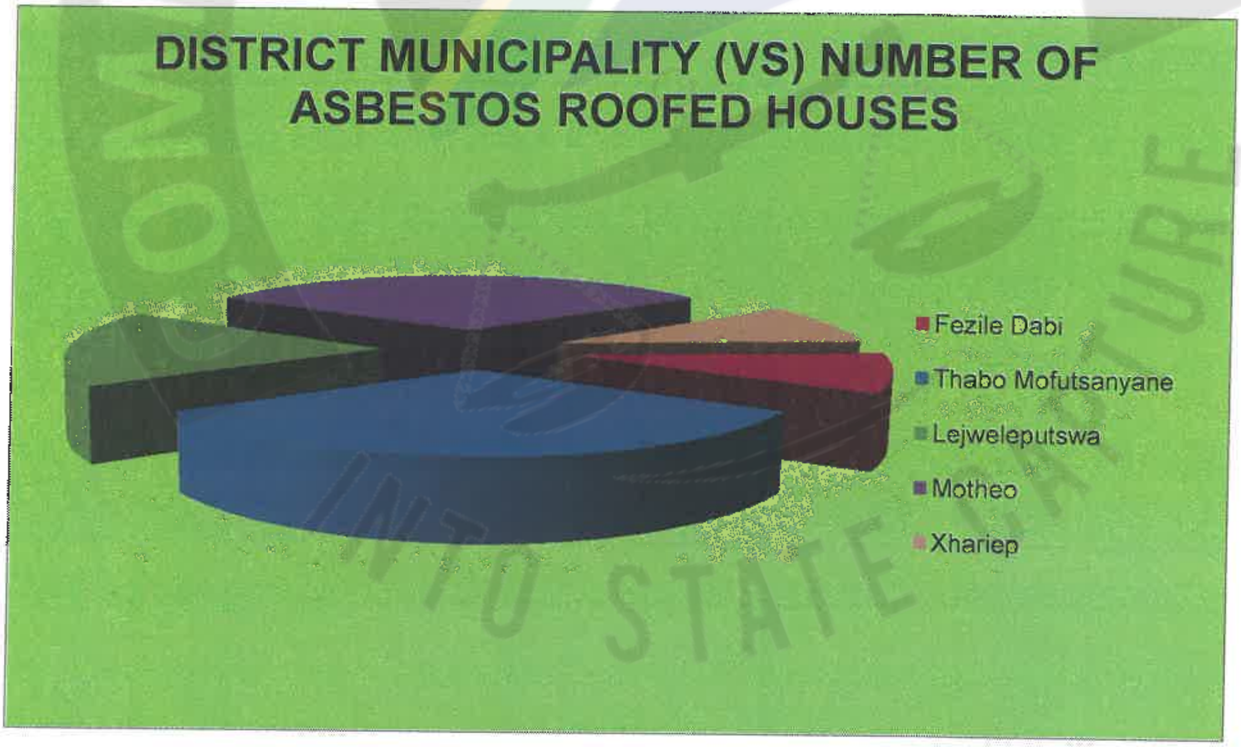
5.3 Implementation planning phase - Once the extent of the problem is known the implementation planning can begin. Planning & construction which is to come later and not part of the current scope will be on affected houses only.

5.4 The Scope of the construction phase has encompassed all areas in 5.2.1 & 5.2.2 above and shall be detailed after the completion of the assessment and planning stages. It will include a typical cost breakdown and the actual (construction) replacement of asbestos roofs.

6. AREA OF WORKS

6.1 Work took place in the following District Municipalities,

ITEM	DISTRICT MUNICIPALITY	NUMBER OF ASBESTOS ROOFED HOUSES	NO OF STANDS WALKED	PERCENTAGE CONCENTRATION OF ASBESTOS OUT OF THE 36 344 ASSESED	NO OF STAND CAPTURED ELECTRONICALLY
1	Fezile Dabi	3 329	130 287	9,16%	+302 000 STANDS
2	Thabo Mofutsanyane	11 869	164 092	32,66%	
3	Lejweleputswa	6 450	155 789	17,75%	
4	Motheo	11 423	141 157	31,43%	
5	Xhariep	3 273	25 768	9,01%	
	Total	**36 344**	**617 093**		**+ 302 000**



See figure 1 for the area of works.

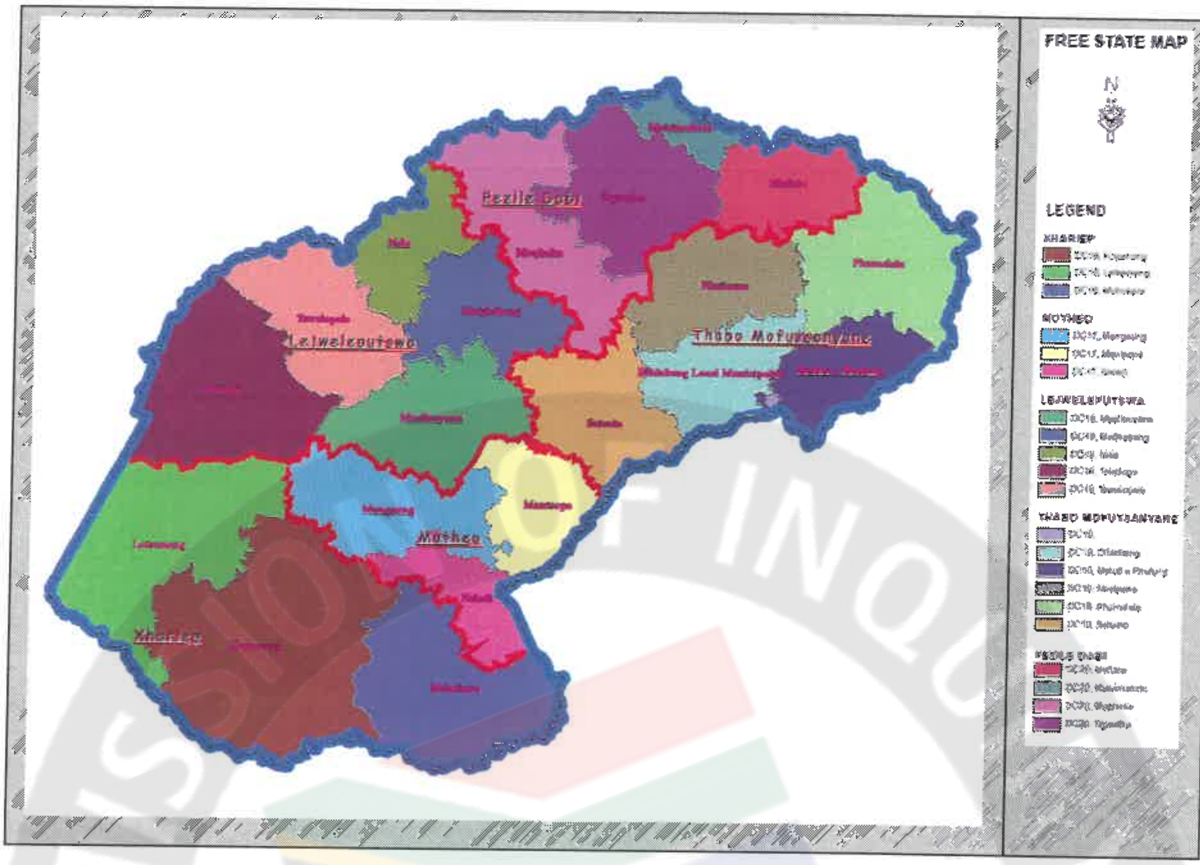


Figure 1.

7. DELIVERABLES OUTLINE

The PRT will be responsible for delivering a project report in all phases, to be submitted to the client (the Department) per District Municipality or Local Municipality which includes the following:

i. an overall summary report for the entire District or Local Municipality

ii. a table of findings per township / town in the Municipality

iii. overall quantification of the extent of problem in Municipality

iv. a structural integrity report , defects of each house

v. details of the existing roof supports (member material, depth of beam filling)

vi. an accurate dimensioned sketch of a typical houses exterior walls

vii. a photograph of each house

viii. The report is to be in hard copy and electronic copy format (Asbestos)

ix. Drawings for new work

x. A Bill of Quantities for the new work

xi. Construction monitoring and report

xii. Project completed and handed over to the client within the specified time

8. ROLES & RESPONSIBILITIES

The Department

i. The Department jointly with the PRT are responsible to providing information on areas that must be prioritised relevant to the project inter alia the names and location of all affected Municipalities, towns and townships.

ii. The Client was further responsible for the monitoring and evaluating the PRT's performance and submitted information.

iii. The Client will be responsible to remunerate the PRT in line with the signed contract.

9. PROJECT METHODOLOGY

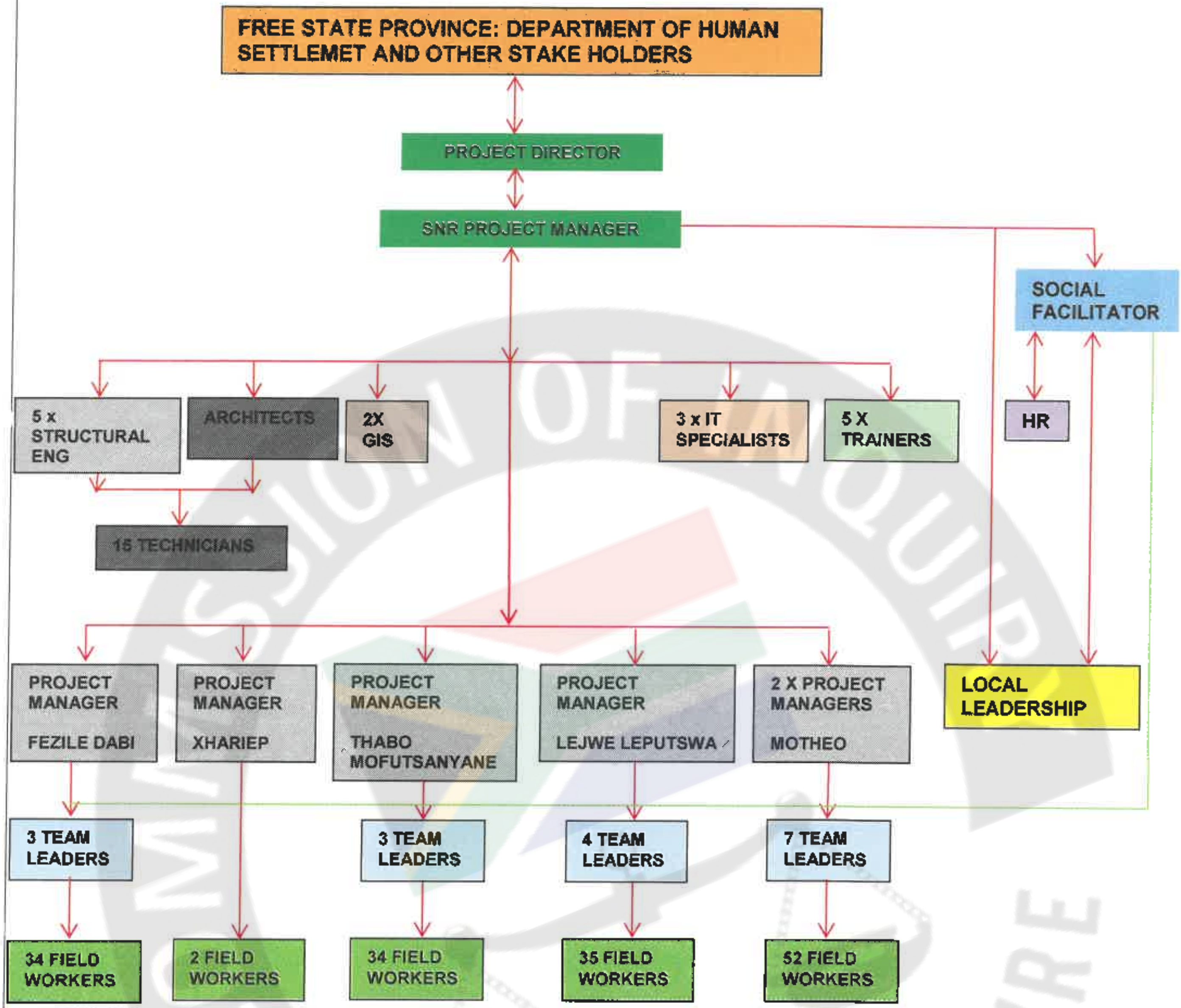
9.1 The Work Force

This was a multi-disciplinary project, the project jurisdiction is covering the whole of the Free State Province within the maximum allocated scope of 300 000,00 residential units/ stands with asbestos which constitutes the scope of this work.

The team consisted of the following;

Project Directors, Assistant Project Directors, Project Managers, Social Facilitators, Trainers, IT Specialist, Architects and Engineers, Team Leaders and Field Workers with the Project Director Leading the whole project.

9.2 The Command Structure during implementation.



Actual Production.

1	Assessed number of Houses	302 000,00
2	Average number of Houses per person per project	1500
3	Actual number of days Worked	35
4	Delays Caused by delayed correspondence from Local leadership	3 to 30 (days)

A team of 155 field workers (contract workers) was drawn from the community through a consultative process involving Councillors and MECs and were each be equipped with a Tablet or a device with which to take pictures of each and every house in the area found to have asbestos as prescribed in the training manual in the Appendix.

These collected data was used by engineers and architects, to ensure the quality of work in the field and assist with any technical glitches. An interactive user interface would ensure that the correct type of data is captured in the field, and then prompt the camera person to go to the next stage until they click COMPLETE, then the field worker could move to the next property.

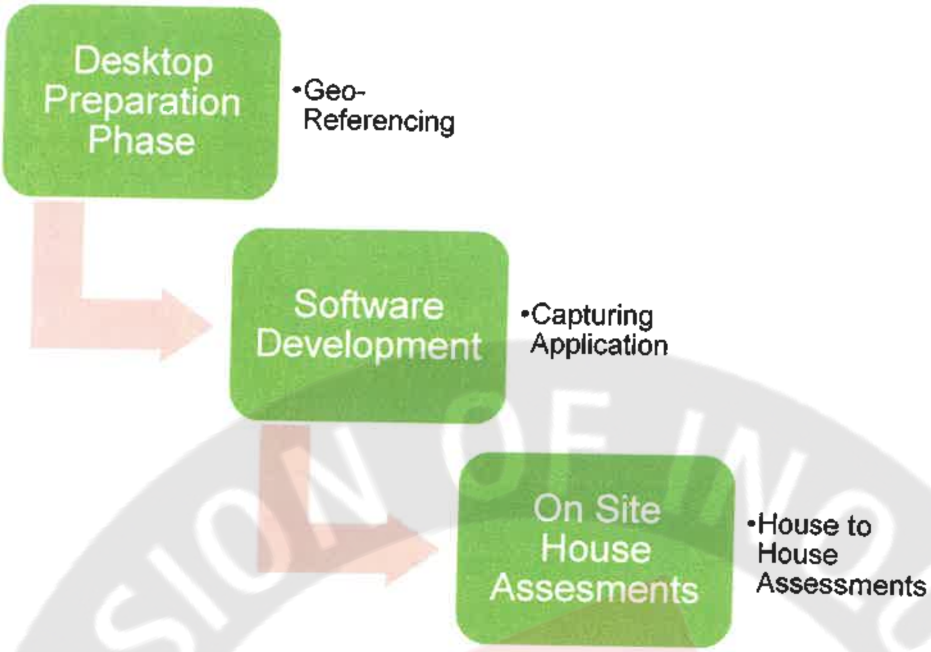
Once the data is accumulated on the Mastartrade Server, the Architects and Engineers would then collect the data and process it with the drop down menu, commenting on specific fields as outlined in the Terms of Reference (structural integrity, type of roof, etc).

The technical staff will then make an engineering judgement concerning each and every one of the units.

Another layer of Quality Assurance also involved the random sampling of the processed data of each and every team to ensure that the project has been completed to specifications and where necessary to take corrective action.

a) The Technology

The IT Solution utilized can be described as a three-phased approach:



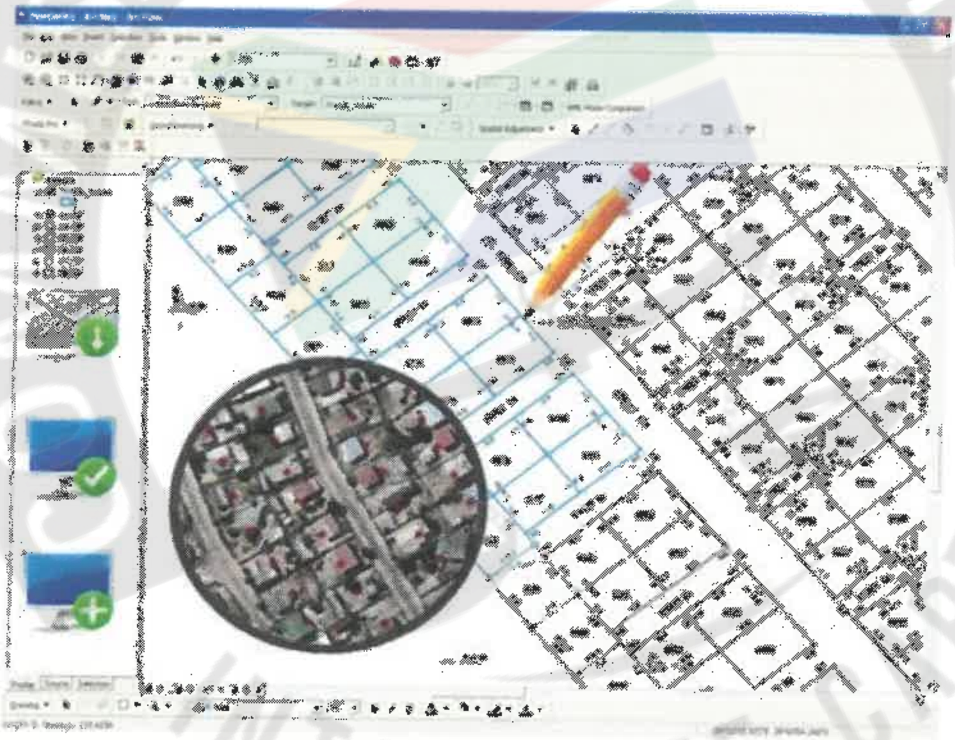
Each of the phased are briefly explained below:

1. DESKTOP PREPARATION PHASE

The desktop preparation phase is the crucial foundation of all project activities.

GEO-REFERENCEING OF STANDS

The electronic shape file of the stands was obtained for the demarcated areas to create an electronic shape file. The electronic shape file is loaded as a back drop on the mobile device for the fieldworker data collection phase. Refer to the below illustration.



GPS LOCATION / GIS MAPPING

The pre-created stand boundaries (geo-referenced stands) served as the work orders for the fieldworker

2. SOFTWARE DEVELOPING

What is GIS and Mobile GIS?

Geographical Information System (GIS) is a computerised system, capable of displaying places on the earth's surface and Mobile GIS is an expansion of GIS, from the office to the field and integrates:

- ✓ Global Positioning System (GPS)
- ✓ Mobile Device (Palmtop PC)
- ✓ ArcGIS Server Mobile SDK
- ✓ Other GIS software packages

Geographical Information System (GIS) has the added advantage of:

- ✓ wireless communication and
- ✓ a spatial database.

Why GIS / Mobile GIS?

Real Time positioning

Mobile GIS is a real time positioning system, which has the benefit of determining and displaying the exact position (x:y co-ordinate) of each household / research point.

Electronic spatial database

The GPS position of the houses can be mapped, and has the added advantage that each of the above, can later be revisited (GPS Navigation). The results of the survey (attribute data) can be linked to the spatial data and various maps can be generated.

Wireless Technology

Information can be transferred over a distance without the use of electrical wires. Different wireless networks can be utilised.

Advanced Reporting Tool

GIS is an excellent application for visual and progress reporting. Spatial analysis (mapping by x,y coordinates) distinguishes GIS from other types of information systems.

Data may be output in digital form for transfer to another software package to allow statistical analysis, desktop publishing or further analysis, however most GIS output is in the form of maps to illustrate trends via the web or on desktop.

Advanced Management Tool

The solution provides advanced management reports e.g. the number of captures per fieldworker per hour / day / week, etc. and the web-based technology will allow role-players to monitor progress on a daily basis via the internet. Role players have web based access to follow progress on a daily bases.

Remote Control

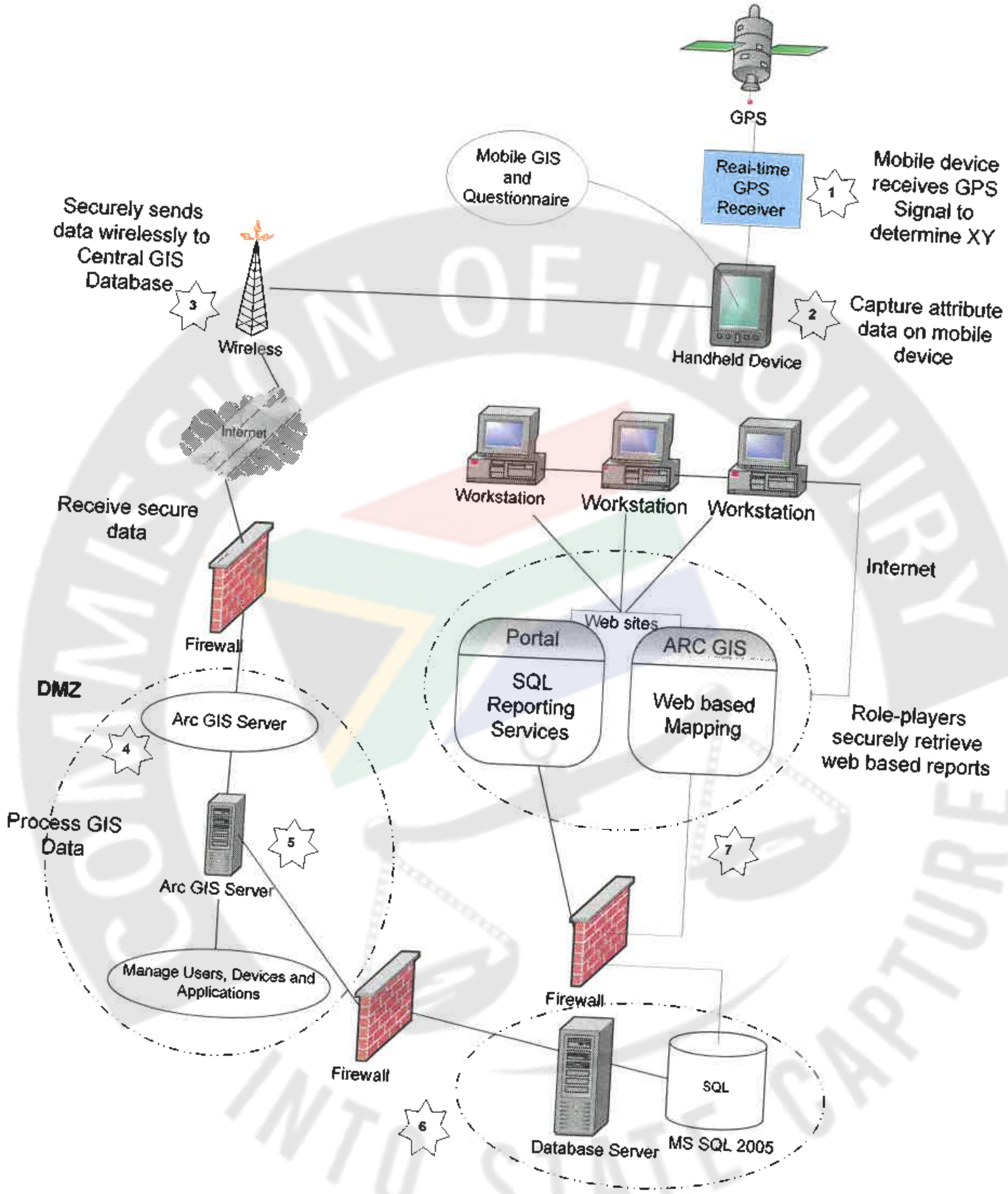
The technology has the added advantage to provide technical support to the fieldworkers via remote control technology by virtually taking over the handheld device.

Leading Technology

GIS and mobile solutions are growing world-wide at an exponential rate and it is the future trend in information technology.

Mobile GIS Architecture

The deployed GIS architecture is described below:



1 Real time GPS Receiver 3-5m accuracy

GPS is a Radio-based navigation system capable of providing a 3-5m accuracy three dimensional position (x,y,z) to:

a. Provide the exact position of the site;
b. Ensure data is captured at the site.

2 Handheld device

We utilized tablets / handheld devices. These devices are tried and tested.

Mobile GIS Application

- ✓ View map, displaying all GIS data for specific solution opened
- ✓ Zoom In / out, Pan (move) Zoom extent
- ✓ Search by attribute
- ✓ Query by specific or multiple parameters
- ✓ Identify objects (features) and display detailed information (dropdown menu's)
- ✓ New captures
- ✓ Edit existing captures
- ✓ Synchronisation
- ✓ Send data to server (New and edited captures
- ✓ Receive data from server (Get the latest updates from the server)

3 Wireless Technology

We utilized wireless networks (GPRS / EDGE / 3G / HSDPA) that allows information to be sent and received across a mobile telephone network to transfer information to a server (wireless).

6 Reporting Services

Reports were served directly from the consolidated database, in the data centre. Reporting services is a web base reporting tool and can be accessed from any remote computer with an internet connection.

Web Based Mapping/Shape Files

It reflects the data captured via GIS application real-time.

Functions and abilities of mapping are:

- View map, displaying all GIS data for specific solution opened
- Zoom In / out, Pan (move) Zoom extent
- Search by attribute
- Query by specific or multiple parameters
- Identify objects (features) and display detailed information
- Categorise sites according to class and type

3. ONSITE HOUSE ASSESSMENTS

3.1) The mobile GIS IT solution comprises of 3 components namely:

a) The mobile device / tablet

b) A software package on the mobile device to capture the data of the occupants and roof structure information and condition

c) A web base central database (Oracle)

Photos embedded in the database linked to stand and structure

3.2) The following highlights a few of the functions of the application:

a) **GIS capabilities** – Navigates the fieldworker to the stands to collect the data on the correct stand.

b) **Built-in validation** rules to ensure the quality of the data collected by the fieldworker.

c) **Compulsory data fields** to ensure only completed captures.

d) Fieldworkers are **prompted to ask the relevant questions.**

e) Save the collected data on the **ultra lite database.**

f) **Synchronisation** function to send / receive data via GPRS to Professional Mobile Mapping's central server

3.3) The assessment entailed the collection of the following attribute data in the field for each stand:

a) **Details –** Stand Number, Suburb, Town
b) **GPS Coordinates**
c) **Roof structure details –** Confirm type of roof (Asbestos), Condition of roof, Comment on other structures on site with Asbestos roofs (example outside toilet)
d) **Photos –** Photo of the roof

3.4) Advantages of the solution in the field:

a) The fieldworkers captured the required data for each house and the GPS provides the correct co-ordinate of each house.
b) The Mobile device displayed the questions (drop down facility) to the fieldworker. The fieldworker completed all questions on the mobile device. The drop down menu facility ensured standardization of the data fields eliminating incorrect spelling and limits the human factor etc.
c) Quality of the data is valued.

3.5) Various quality control mechanism are put in place to ensure high quality data

a) **Validation checks –** data validity checking is enhanced by the quality control mechanism.
b) **Compulsory fields** - The application forced the fieldworker to capture all the compulsory data fields.
c) **GPS points** - The application did not allow captures without a GPS point or if fieldworker is not within 10 meter from the stand
d) **Clean Sweep –** The mapping reports served as a management tool to ensure that each area is completed.

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10. DESKTOP STUDY AND RESEARCH FINDINGS

The research findings attached formulates the areas of coverage of the 300 000 stands in the area which constitutes the scope of this work.

An initial field exercise revealed that out of the +300 000,00 stands, 36 344 that contains asbestos in the area which constitutes the scope of this area.

An example of the District Municipality and Local Municipalities, Tows, SP's and Erf is illustrated below. These Maps are attached as **Annexure for your easy reference.**

FEZILE DABI DISTRICT MUNICIPALITY

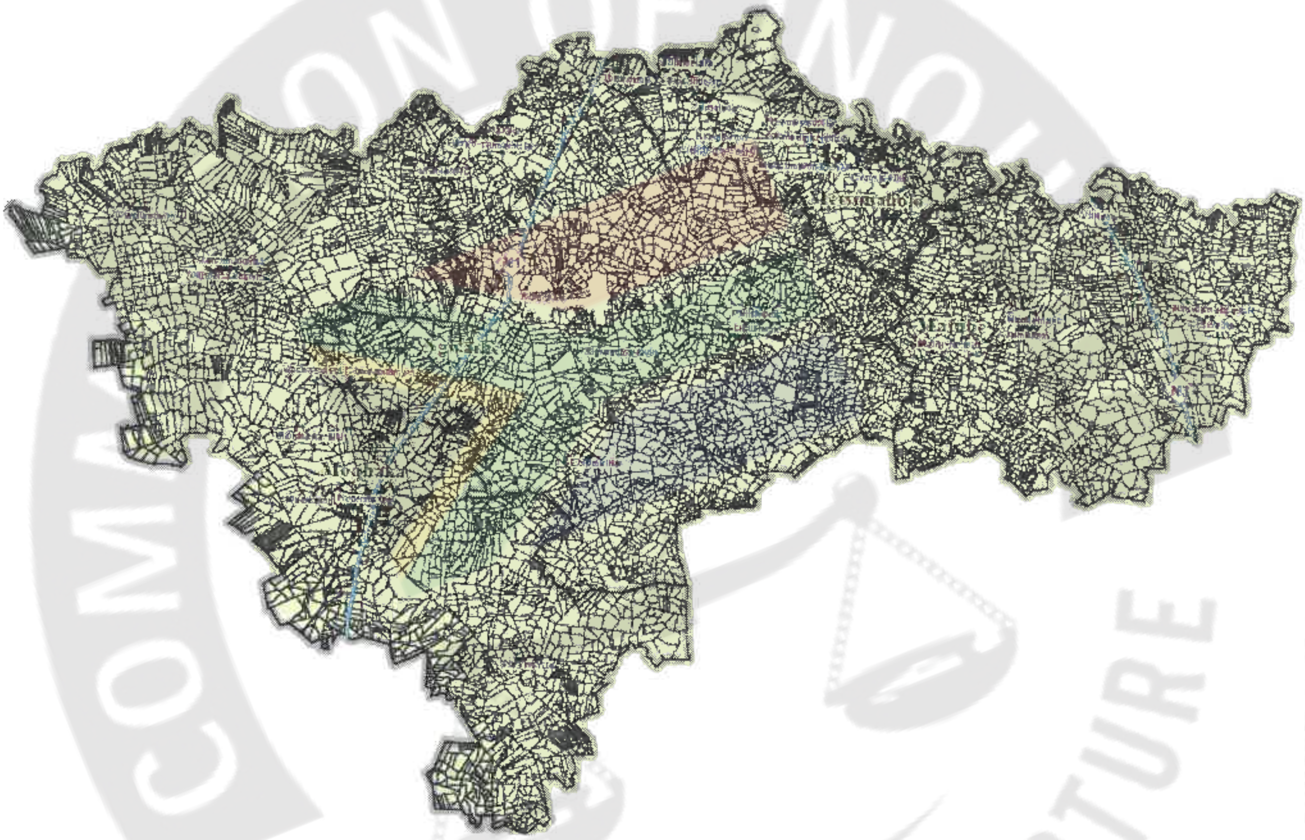

Figure 3

MOQHAKA LOCAL MUNICIPALITY

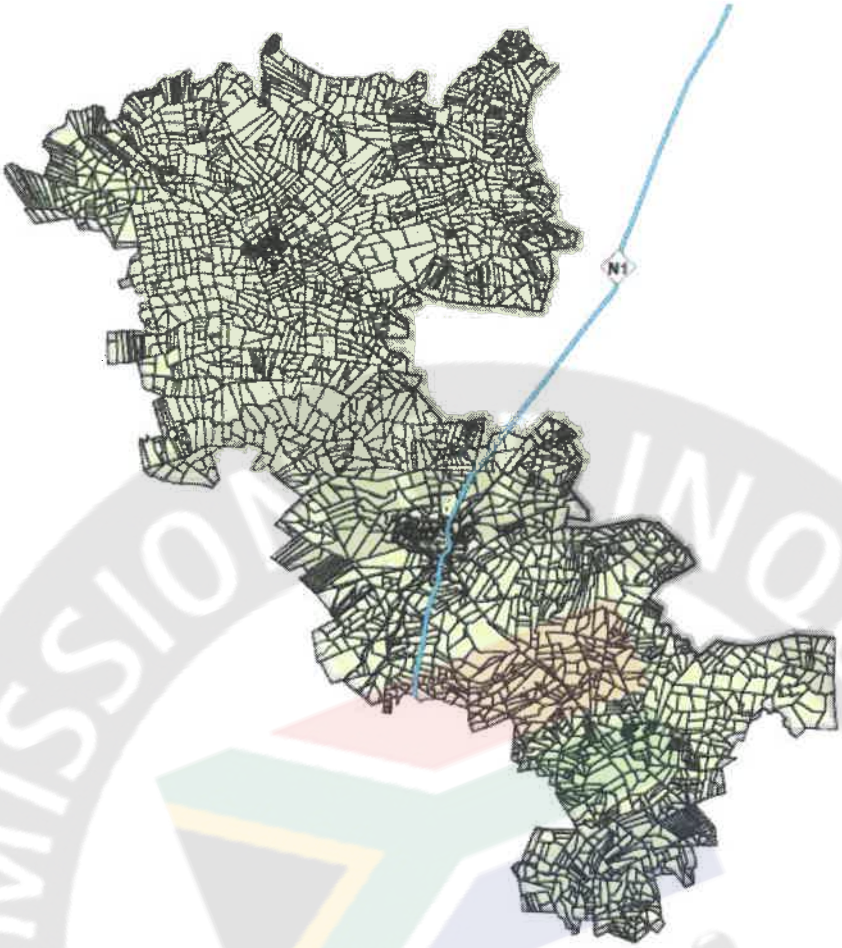

Figure 4

TOWNSHIP BOUNDARIES AND SP'S

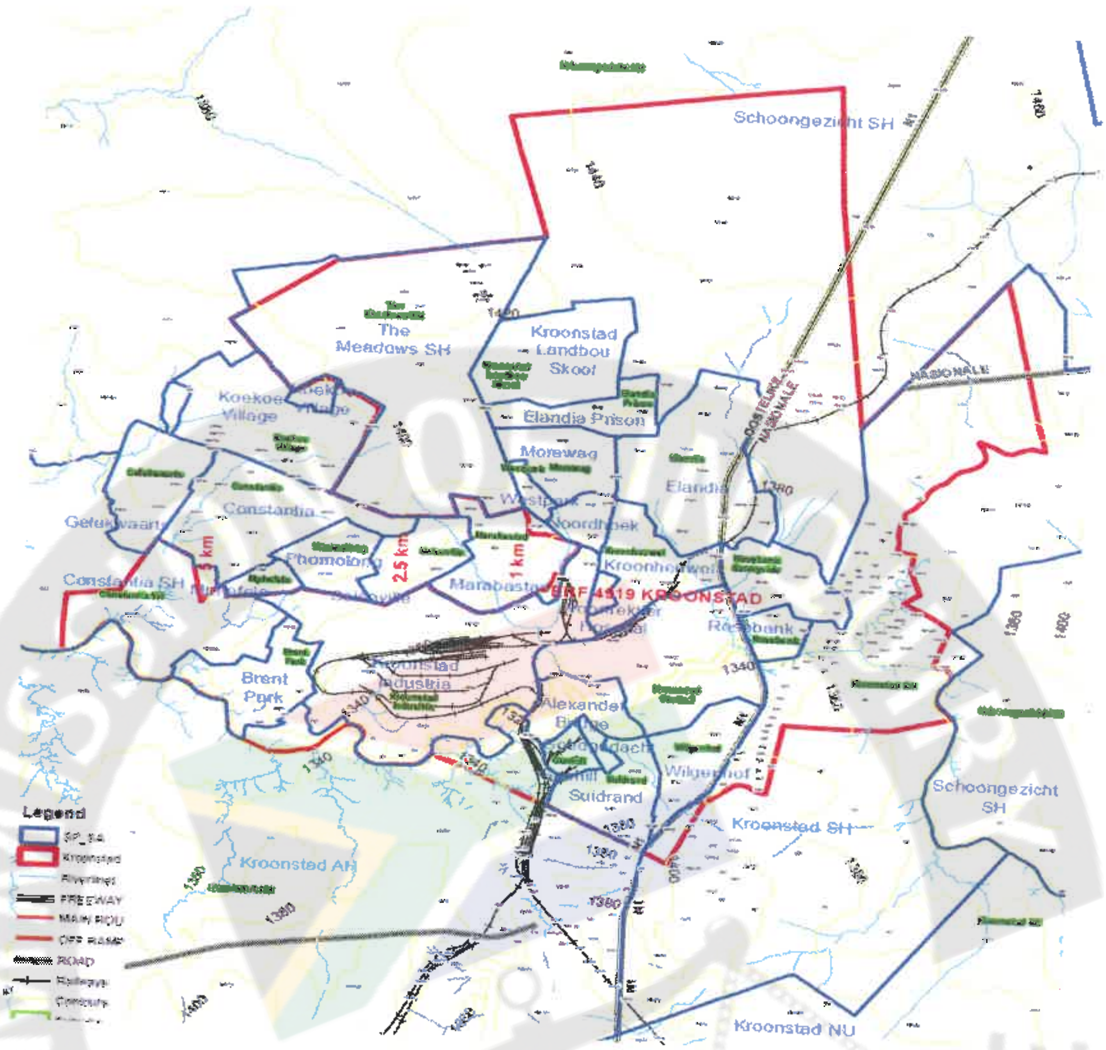

Figure 5

ERF NUMBERS

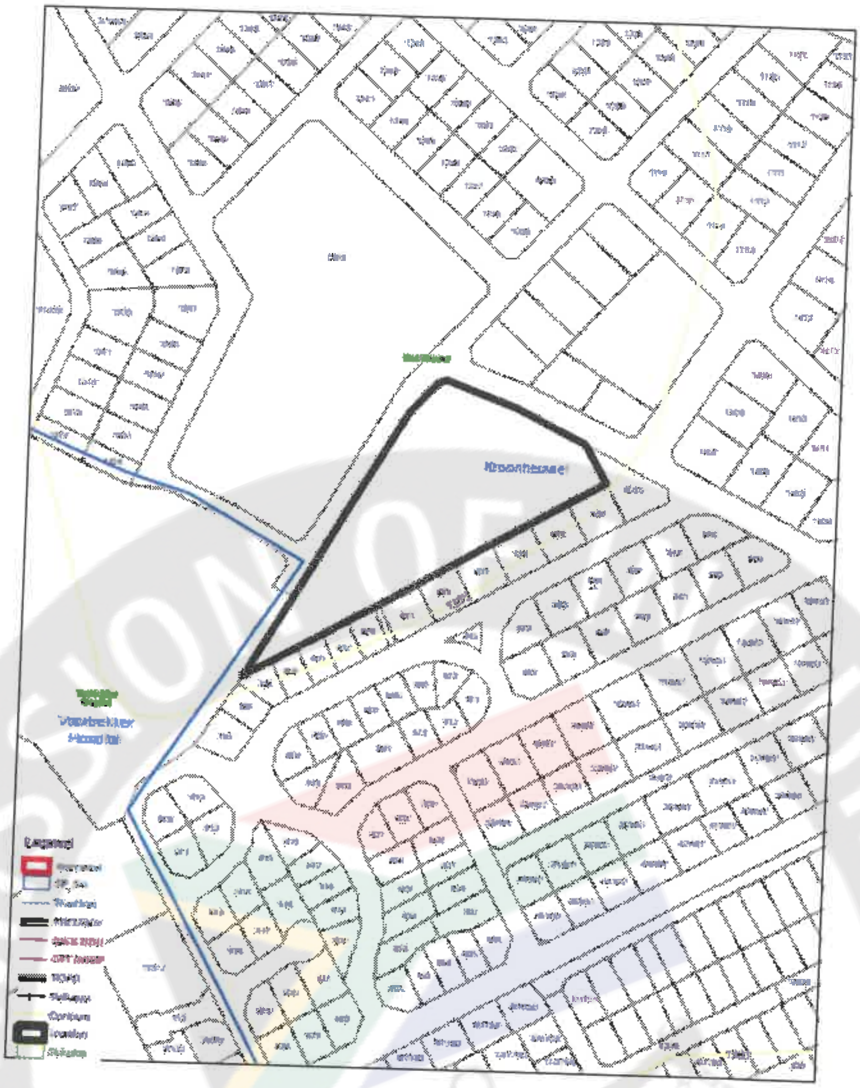

Figure 6

11. PROGRAM AND PROGRESS

a. Current Status

1	Planning and Implementation	Percentage of Work Compete
1.1	Collection of Shape files	100%
1.2	Validate and prepare Shape files as complete	100%
1.3	Identification of area of works (Asbestos Houses)	100%
1.4	Site Visit	100%
1.5	Compilation of Housing Typologies	100%
2	IT	
2.1	Develop an application	100%
2.2	Provide a server as complete	100%
2.3	Operate and Maintain Server	100%
2.4	Supply and deliver Gadgets to be programed	100%
3	Social Facilitation	
3.1	Consultation with Political Heads and Tradition Leaders in Area of Works	100%
3.2	Communication with the Community and other stakeholders	100%
4	Human Resource	
4.1	Appointment of team leaders and training	100%
4.2	Recruitment of Foot Soldiers	100%
4.3	Appointment of Quality Assurers	100%
5	Logistics & Training	
5.1	Transportation and Accommodation of Team Leaders and Project Managers	100%
5.2	Training of Field Workers	100%
6	Operations	
6.1	Capturing of Data on Site	100%
6.2	Quality Assurance on captured Data	100%
6.3	Certification of Woks by Engineer and Architect	100%
7	Out Put	
7.1	Printing of Reports	100%
7.2	Compile, Incorporate, present and submit Final Report	100%

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b. Program and Progress

- The field work commenced on the 17th of November 2014 (Training and preparations) and the actual site audit commenced on the 24th of November 2014 and the site audit was completed on the 6th of February 2015 and the final report to be submitted to the employer on the 13th of February 2015.

- Project duration was initially scheduled at 31 days counted from the day the physical work starts on site, however the project was completed on the 6th of February 2015.

- The consultation with communities started on the 20th of November 2014 until the 16th of January 2015.

12. DELIVERABLES SUBMISSION

Cross-referencing the deliverables:-

As outlined in the various deliverables is listed below.

Deliverable	Description
i.	an overall summary report for the entire Municipality
ii	a table of findings per township / town in the Municipality
iii	overall quantification of the extent of problem in Municipality
iv	Drafting of the existing housing typologies within the area of works.
v	a colour or black and white photograph of each house

Value Addition

a) Developing Roofing Options

BLACKHEAD JV has gone ahead and developed Options 1 to 4 for the proposed new roof types. Each one has its merits and demerits, and an evaluation was done to assist in decision making.

These are:-

Option 1: Concrete roof tiles

Option 2: Concrete tiles (Harvey)

Option 3: Sheet metal (IBR)

Option 4: Composite roof panel.

Remedial Work

A more detailed report outlining the comparative evaluation of each option can will be made available in the next phase of works, however **figure 7** illustrates some of the typical detailing on the remedial work to be done on the roof.

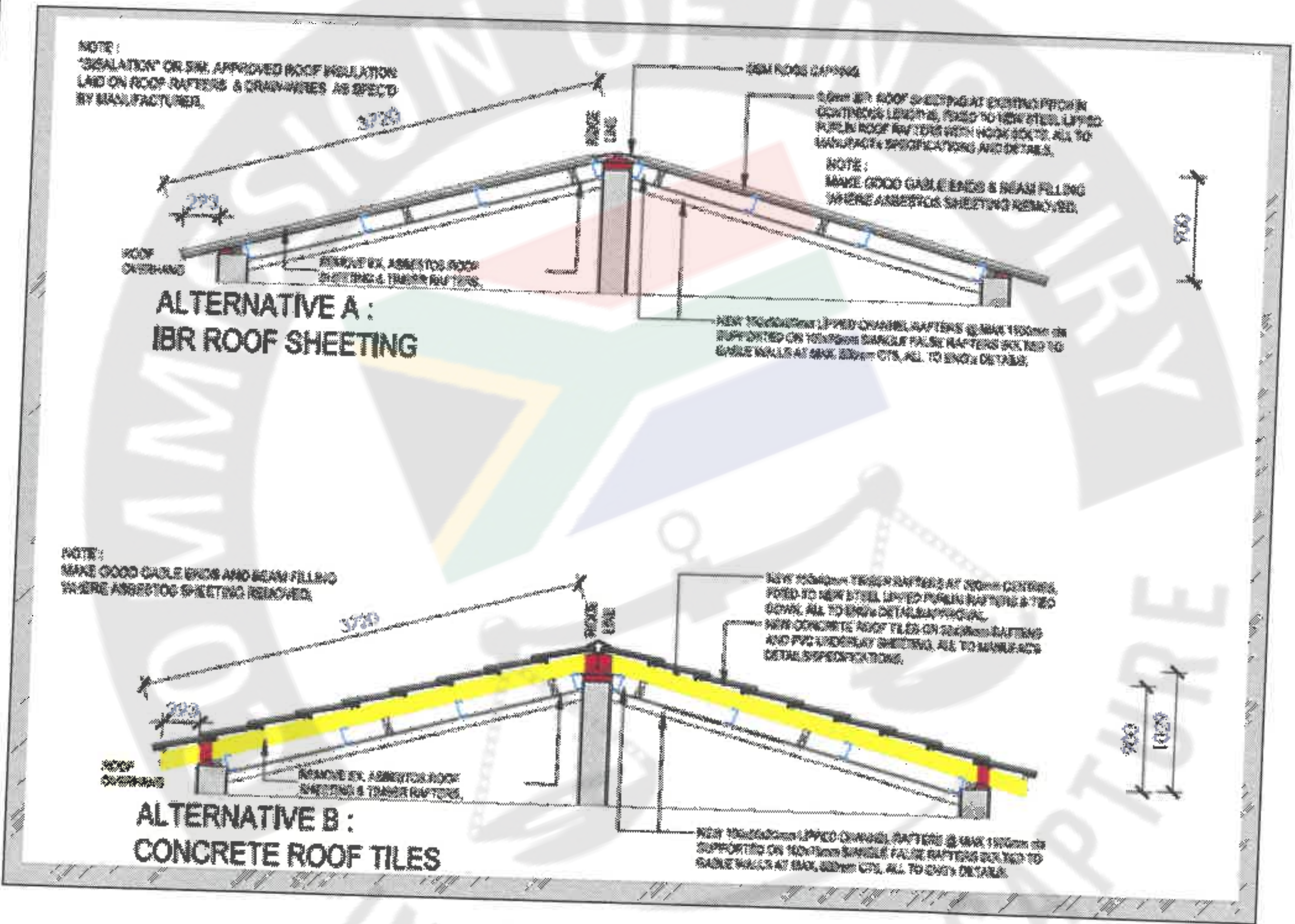


Figure 7

b) Existing Typologies in the Free State

Attached as **Annexure** are some of the roof Typologies found in the Free State for your easy reference.

THE FOLLOWING EXISTING TYPOLOGIES WERE DISCOVERED

b.1) Single Story Residential Unit

Flat Roof ($60m^2$ to $56m^2$)

Pitch Roof ($56m^2$)

70

b.2) **Single Story: Semidetached Residential Unit.**

Semidetached House 102 m^2

Semidetached House (56 m^2)

c.3) **Double Story Semidetached Residential Unit**

c.4) **Other**

100% Asbestos (Walls and Roof)

100% Asbestos (Walls and Roof)

Less than (56m²)

c) A durable web-based tool for future use.

Blackhead will add value for the Client by using a durable web-based platform that can be handed over to the Municipality or Government for decision making, going forward.

This tool can be used to query and generate reports on the houses with and with no asbestos, whether by ward, by SP or whatever metric the Client may choose. Instruction and or training on how to use the web interface can be provided on request.

The web interface can be provided to the employer at no additional cost starting on the 13th of February 2015 until the 12th of February 2018 and 5 users will be allowed to have access to the interface.

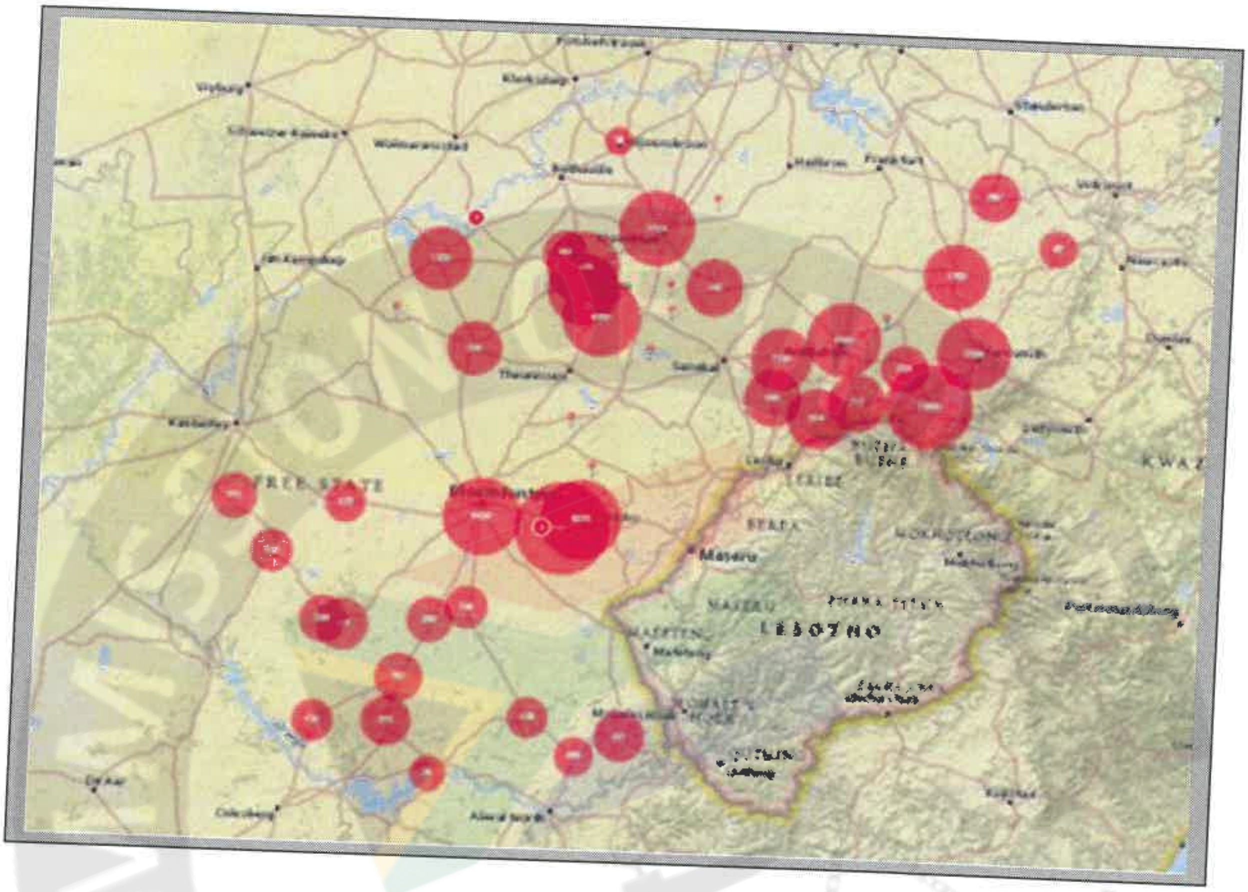
See existing typologies as attached as **Annexure** for your easy reference.

13. GIS DATA AVAILABLE AND SOFTWEAR CAPABILITIES

The tool at the Department's disposal can be used to achieve the following;

Check the Concentration of Asbestos per Province, per District, per Town, Per Ward, Per Stand

Per Province (Free State)



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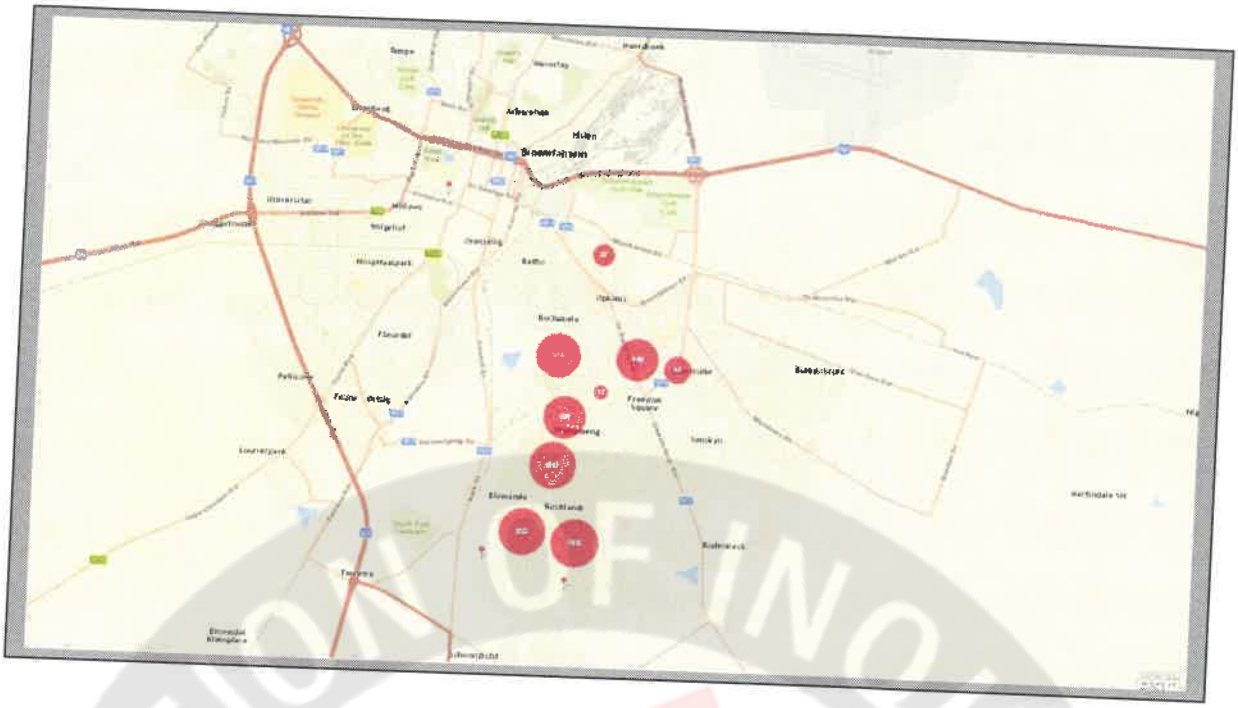
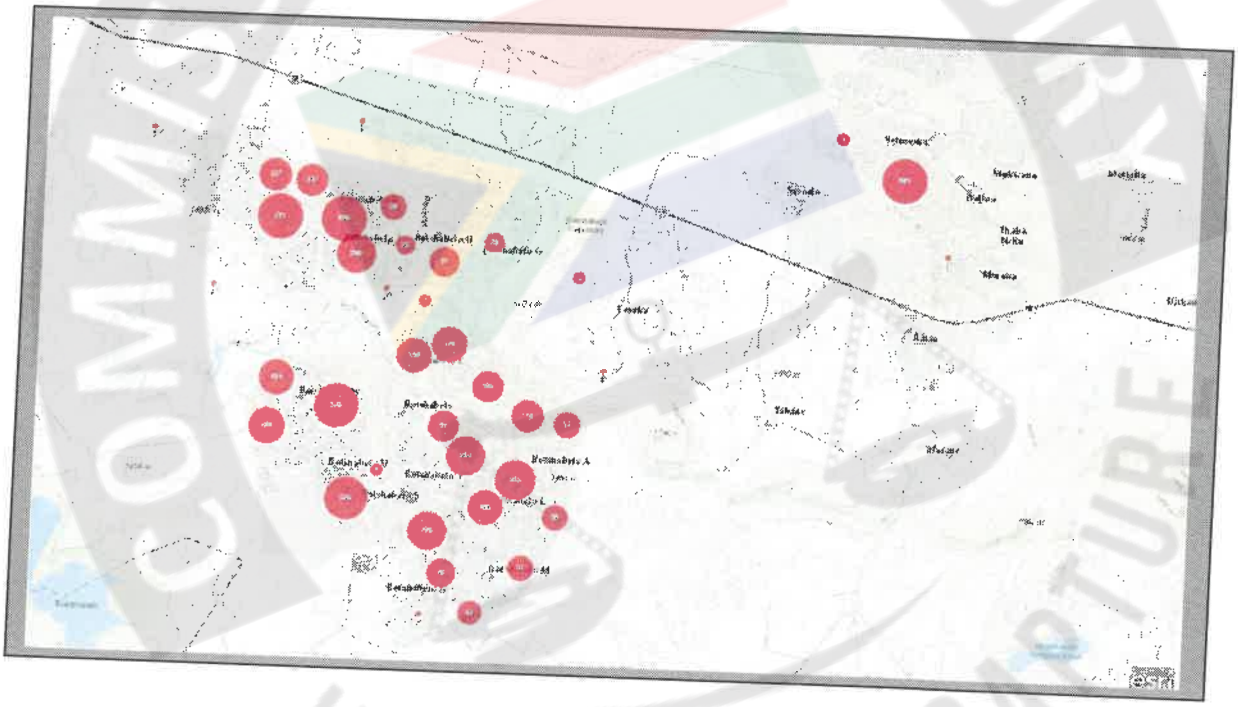
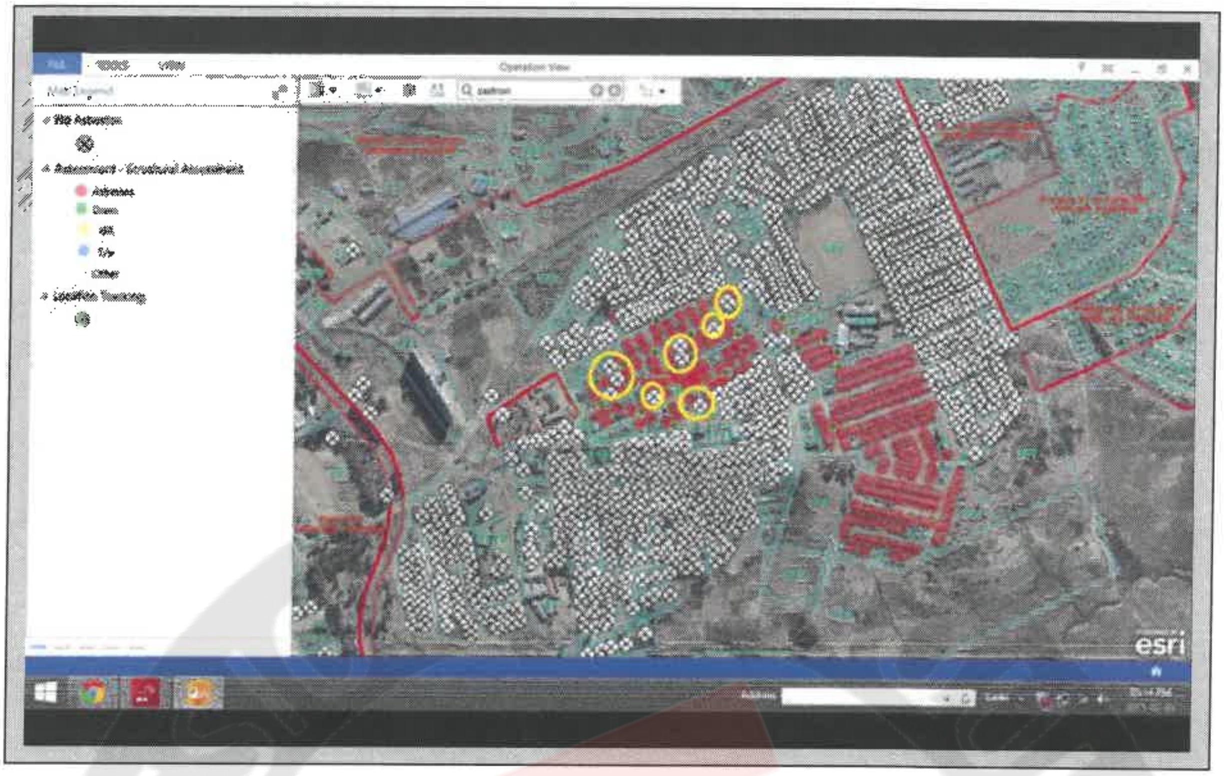
Per District or Metropolitan Municipality (Mangaung Township)



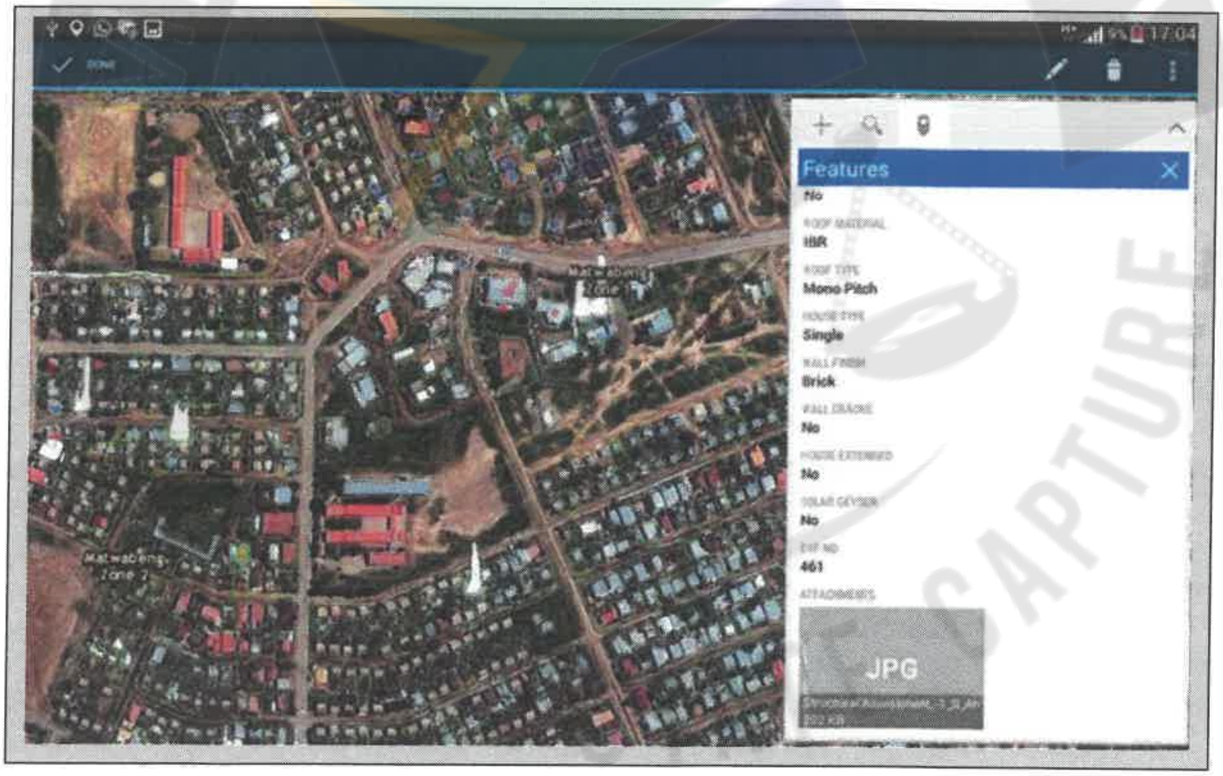
Per Town (Botshabelo)



Per Town and Ward



Per Stand



14. LABOUR STATISTICS

The labour employed on this project is as attached as **Annexure.**

155 Field workers were employed on the project and where all sourced from the loca community.

15. AUDIT PER DISTRICT, LOCAL MUNICIPALITY AND TOWN

15.1

THABO MOFUTSANYANE DISTRICT MUNICIPALITY	TOTAL NO. OF ASBESTOS	11869

DISTRICT	MUNICIPALITY	TOWN	NUMBER OF HH WALKED	LOCATION	NUMBER OF HH WALKED	NO OF ASBESTOS	ASBESTOS PERCENTAGE
THABO M	Dihlabeng	Bethlehem	5214	Bohlokong	18826	1699	7,07%
				Beken Park		154	0,64%
		Fouriesburg	223	Mashaeng	3495	19	0,51%
		Clarens	246	Kgubetswana	1957	42	1,91%
		Paul Roux	214	Fateng Tse Ntsho	1780	0	0,00%
		Rosendal	53	Mautse	1237	0	0
					Total	1914	

DISTRICT	MUNICIPALITY	TOWN	NUMBER OF HH WALKED	LOCATION	NUMBER OF HH WALKED	NO OF ASBESTOS	ASBESTOS PERCENTAGE
THABO M	Maluti a Phofung	Harrismith	7937	Intabazwe- 42 Hill-Wilgepark	7937	1395	8,79%
				Tshiame	4251	0	0,00%
		Kestell		Tlholong	2154	4	0,19%
		Qwaqwa	65441				
			Phuthadijthaba	A	17529	2485	14,18%
				B		88	0,50%
				H		313	1,79%
				J		3983	22,72%
				L		31	0,18%
			Other Places in Qwaqwa	Boiketlo	1665		
				Bolata	4359		
				Botjhabelo	531		
				Dinkweng	178		
				Dithotaneng	2861		
				Ha-Rankopane	718		
				Ha-Sethunya	1977		
				Ha-Taudi	247		
				Jwala Boholo	135		
				Kgibiditing	114		
				Kudumane	779		
				Lejwaneng	438		
				Letshalemaduke	2530		
				Mabolela	88		
				Mafikeng	615		
				Makeneng	991		
				Makgemeng	423		
				Makhalaneng	1552		
				Makwane	5577		
				Mangaung	2747		
				Mantsubise	768		
				Marabeng	130		
				Marakong	1060		
				Masaleng	929		
				Masianokeng	85		
				Matshaneng	591		
				Matshidiso	126		
				Matsieng	512		
				Matsikeng	1639		
				Matsopaneng	286		
				Mmakong	574		
				Moeding	214		
				Mokabatane	55		
				Monontsha	1550		
				Mphatlalatsane	819		
				Naledi	1401		
				Namahadi	927		
				Ntshehele	556		
				Paballong	2065		

DISTRICT	MUNICIPALITY	TOWN	NUMBER OF HH	LOCATION	NUMBER OF HH	NO OF ASBESTOS	ASBESTOS PERCENTAGE
THABO M	Mantsopa	Excelsior	194	Mahlatswetsa	1623	123	6,77%
		Hobhouse	105	Dipelaneng	1166	0	0,00%
		Ladybrand	1345	Manyatseng	6434	327	4,20%
		Tweespruit	348	Borwa	1411	225	12,79%

Total 675

DISTRICT	MUNICIPALITY	TOWN	NUMBER OF HH	LOCATION	NUMBER OF HH	NO OF ASBESTOS	ASBESTOS PERCENTAGE
THABO M	Nketoana	Arlington	64	Leratswana	1172	0	0,00%
		Reitz	1130	Petsana	5105	3	0,05%
		Lindley	354	Ntha	3010	0	0,00%
		Petrus Steyn	231	Mamafubedu	3138	40	1,19%

Total 43

DISTRICT	MUNICIPALITY	TOWN	NUMBER OF HH	LOCATION	NUMBER OF HH	NO OF ASBESTOS	ASBESTOS PERCENTAGE
THABO M	Phumelela	Memel	229	Zamani	1603	0	0,00%
		Vrede	689	Thembalihle	4166	183	3,77%
		Warden	641	Zenzeleni	2567	184	5,74%

Total 367

DISTRICT	MUNICIPALITY	TOWN	NUMBER OF HH	LOCATION	NUMBER OF HH	NO OF ASBESTOS	ASBESTOS PERCENTAGE
THABO M	Setsoto	Clocolan	429	Hlohlolwane	4896	65	1,22%
		Ficksburg	1719	Meqheleng	10814	45	0,36%
		Senekal	1252	Matwabeng	6486	526	6,80%
		Marquard	431	Moemaneng	4028	49	1,10%

Total 575

15.2

LEJWELEPUTSWA DISTRICT MUNICIPALITY	TOTAL NO. OF ASBESTOS	6450

DISTRICT	MUNICIPALITY	TOWN	NUMBER OF HH WALKED	LOCATION	NUMBER OF HH WALKED	NO OF ASBESTOS	ASBESTOS PERCENTAGE
Lejweleputswa	Masilonyana	Brandfort	891	Majwemasweu	2621	309	8,80%
		Theunissen	519	Masilo	6438	289	4,15%
		Verkeerdevlei	45	Tshepong	589	0	0,00%
		Winburg	423	Makeleketle	3589	97	2,42%
					Total	695	

DISTRICT	MUNICIPALITY	TOWN	NUMBER OF HH WALKED	LOCATION	NUMBER OF HH WALKED	NO OF ASBESTOS	ASBESTOS PERCENTAGE
Lejweleputswa	Matjhabeng	Allanridge	848	Nyakallong	4006	50	1,03%
		Welkom	19000	Hani Park	3396	17	0,08%
				Thabong	39710	2460	6,19%
				Riebeeckstad	3772	0	0,00%
		Odendaalsrus	3099	Kutloanong	15621	826	4,41%
		Hennenman	1281	Phomolong	5944	0	0,00%
		Virginia	6708	Meloding	13683	398	1,95%
		Ventersburg	368	Mmamahabane	2311	29	1,08%
				Tswelangpele	727	14	1,93%
					Total	3794	

DISTRICT	MUNICIPALITY	TOWN	NUMBER OF HH WALKED	LOCATION	NUMBER OF HH WALKED	NO OF ASBESTOS	ASBESTOS PERCENTAGE
Lejweleputswa	Nala	Bothaville	1372	Kgotsong	10692	1169	9,69%
		Wesselbron	457	Monyakeng	6624	7	0,10%
					Total	1176	

DISTRICT	MUNICIPALITY	TOWN	NUMBER OF HH WALKED	LOCATION	NUMBER OF HH WALKED	NO OF ASBESTOS	ASBESTOS PERCENTAGE
Lejweleputswa	Tokologo	Boshof	992	Seretse	1332	100	4,30%
		Dealesville	320	Tshwarakganang	1309	178	10,93%
		Hertzogville	347	Malebogo	2205	15	0,59%

Total **293**

DISTRICT	MUNICIPALITY	TOWN	NUMBER OF HH WALKED	LOCATION	NUMBER OF HH WALKED	NO OF ASBESTOS	ASBESTOS PERCENTAGE
Lejweleputswa	Tswelopele	Bultfontein	808	Phahameng	4990	467	8,05%
		Hoopstad	405	Tikwana	3459	25	0,65%

Total **492**

15,3

MANGAUNG METRO MUNICIPALITY	TOTAL NO. OF ASBESTOS	11423

DISTRICT	MUNICIPALITY	TOWN	NUMBER OF HH	LOCATION	NUMBER OF HH WALKED	NO OF ASBESTOS	ASBESTOS PERCENTAGE
Motheo	Mangaung Metro	Bloemfontein	**81286**	Mangaung	68595	4780	3,19%
		Mangaung		Thabanchu	21792	113	0,08%
				Motlala	326	874	0,58%
				Rooifontein	296	0	0,00%
				botshabelo a	2642	211	64,72%
				botshabelo b	930	71	23,99%
				botshabelo c	3307	412	15,59%
				botshabelo d	2240	122	13,12%
				botshabelo e	2278	351	10,61%
				botshabelo f	6942	439	19,60%
				botshabelo g	1715	120	5,27%
				botshabelo j	3296	380	5,47%
				botshabelo k	4031	1243	72,48%
				botshabelo l	2582	164	4,98%
				botshabelo m	2707	80	1,98%
				botshabelo n	2553	357	13,83%
				botshabelo r	6	0	0,00%
				botshabelo s	1267	390	15,28%
				botshabelo sp	3588		0,00%
				botshabelo t	2449	195	15,39%
				botshabelo u	3577	640	17,84%
				botshabelo v	1411	4	0,16%
				botshabelo w	3048	477	13,34%

Total **11423**

15.4

XHARIEP DISTRICT MUNICIPALITY	TOTAL NO. OF ASBESTOS	1026

DISTRICT	MUNICIPALITY	TOWN	NUMBER OF HH	LOCATION	NUMBER OF HH WALKED	NO OF ASBESTOS	ASBESTOS PERCENTAGE
XHARIEP	Kopanong	Bethulie	676	Lephoi	1276	76	3,89%
		Fauresmith	232	Ipopeng	744	239	24,49%
		Edenburg	427	Ha-Rasebei	1554	205	10,35%
		Jagersfontein	590	Itumeleng	1346	422	21,80%
		Philippolis	298	Poding-Tse-Rolo	849	132	11,51%
		Reddersburg	205	Matoporong	1269	156	10,58%
		Springfontein	370	Maphodi	810	259	21,95%
				Williamsville		56	4,75%
		Trompsburg	523	Madikgetla	1092	262	16,22%
					Total	**1807**	

DISTRICT	MUNICIPALITY	TOWN	NUMBER OF HH	LOCATION	NUMBER OF HH WALKED	NO OF ASBESTOS	ASBESTOS PERCENTAGE
XHARIEP	Letsemeng	Jacobsdal	1003	Ratanang	1112	211	9,98%
		Koffiefontein	499	Ditlhake	2359	66	2,31%
				Rooibult/ Diamanthoogte	345	90	26,09%
		Luckhoff	243	Relebohile	311		
				Teisesville	453	8	3,29%
				Oppermans	230		
		Petrusburg	302	Bolokanang	2337	123	4,66%
					Total	**498**	

DISTRICT	MUNICIPALITY	TOWN	NUMBER OF HH	LOCATION	NUMBER OF HH WALKED	NO OF ASBESTOS	ASBESTOS PERCENTAGE
XHARIEP	Mohokare	Rouxville	382	Roleleathunya	1706	84	4,02%
				Uitkoms		22	
		Smithfield	435	Mofulatshepe	1200	128	7,83%
		Zastron	748	Matlakeng	3901	331	7,12%

Total **565**

DISTRICT	MUNICIPALITY	TOWN	NUMBER OF HH	LOCATION	NUMBER OF HH WALKED	NO OF ASBESTOS	ASBESTOS PERCENTAGE
XHARIEP	Naledi	Dewetsdorp	330	morojaneng	2560	93	3,22%
		Wepener	447	Qibing	2678	310	9,92%
		Vanstadensrus	267	Thapelang	305	0	0,00%

Total **403**

15.5

FEZILE DABI DISTRICT MUNICIPALITY	TOTAL NO. OF ASBESTOS	3329

DISTRICT	MUNICIPALITY	TOWN	NUMBER OF HH	LOCATION	NUMBER OF HH	NO OF ASBESTOS	ASBESTOS PERCENTAGE
FEZILE DABI	Mafube	Cornelia	389	Ntswanatsatsi	496	0	0,00%
		Frankfort	1753	Namahadi	5975	169	2,19%
		Tweeling	192	Mafahleng	1395	0	0,00%
		Villiers	483	Qalabotja	4348	397	8,22%

Total **566**

DISTRICT	MUNICIPALITY	TOWN	NUMBER OF HH	LOCATION	NUMBER OF HH	NO OF ASBESTOS	ASBESTOS PERCENTAGE
FEZILE DABI	Metsimaholo	Deneysville	671	Refengkgotso	4883	386	6,95%
		Oranjeville	149	Metsimaholo	1405	12	0,77%
		Sasolburg	10508	Zamdela	25067	1045	2,94%

Total **1443**

DISTRICT	MUNICIPALITY	TOWN	NUMBER OF HH	LOCATION	NUMBER OF HH	NO OF ASBESTOS	ASBESTOS PERCENTAGE
FEZILE DABI	Moqhaka	Kroonstaad	7315	Maokeng	22316	782	2,64%
		Steynsrus	227	Matlwangtlwang	2182	0	0,00%
		Viljoenskroon	697	Rammulotsi	7598	124	1,49%
					Total	906	

DISTRICT	MUNICIPALITY	TOWN	NUMBER OF HH	LOCATION	NUMBER OF HH	NO OF ASBESTOS	ASBESTOS PERCENTAGE
FEZILE DABI	Ngwathe	Parys	3256	Tumahole	11667	73	0,49%
				Schonkenville		30	0,20%
		Vredefort	561	Mokwallo	3664	102	2,41%
		Koppies	326	Kwakwatsi	3635		0,00%
		Edenville	174	Ngwathe	1641		0,00%
		Heilbron	1667	Phiritona	5647		0,00%
				Sanderville		209	2,86%
					Total	414	

16. NEW ROOF DESIGN

The new roof design is in accordance with the National Building Regulation, NHBRC Home Building Manual and SANS 10400XA to replace the existing asbestos roof sheets. The loading design is designed to SANS10160

16.1 Roof Options

The options offered for the roof design include the following;

a) Concrete Roof Tiles on the timber rafters with ceiling,
b) IBR roof Sheets coated with Chromadeck on timber rafters with Ceiling
c) Concrete roof tiles on steel section beams with aluminum foil for insulation
d) IBR Roof Sheets as galvernised on steel section beams with aluminum foil and insulation.

See typical drawings as attached as **Annexure** for your easy reference.

All existing roof pitch of less than 17,5° will have to be adjusted to 17,5° (Minimum slope)

16.2. Re-Roofing Methodology

The process to remove old roofs and install new roofs involves the following:

a) Temporary relocation of household furniture and home owners

b) Specialist Sub-Contractor to remove the asbestos roof sheets and dump in an approved landfill area.

c) Repairing of gable walls to fit new roof rafters

d) Installation of rafters

e) Installation of new roof cover (concrete tiles or IBR Sheets)

17. COST ESTIMATES

The Cost of replacing the Asbestos roof is calculated as follows;

Option 1 (Concrete Tile Roof)

COST OF REPLACING THE EXISTING ASBESTOS ROOFED HOUSE WITH A CONCRETE TILE

ITEM 1	DESCRIPTION	UNIT	QTY	RATE	AMOUNT
1	Demolish existing building and dispose rubble	each	5 445	R 11 000,00	R 59 895 000,00
2	Construct a New House as complete	each	5 445	R 126 000,00	R 686 070 000,00
3	Handle Asbestos, Strip and Dispose	each	36 303	R 39 312,00	R 1 427 143 536,00
4	Uninstall and Install Geyser complete with electrical	each	10 000	R 4 000,00	R 40 000 000,00
5	Repair and Renovate Existing House	each	30 858	R 46 169,00	R 1 424 683 002,00

Sub total	R 3 637 791 538,00	excl vat
5% Contingencies	R 181 889 576,90	
8% escalation (per annual)	R 30 557 448,92	
Sub Total	**R 3 850 238 563,82**	**excl vat**

Option 2 (IBR Sheet Roof)

COST OF REPLACING THE EXISTING ASBESTOS ROOFED HOUSE WITH IBR

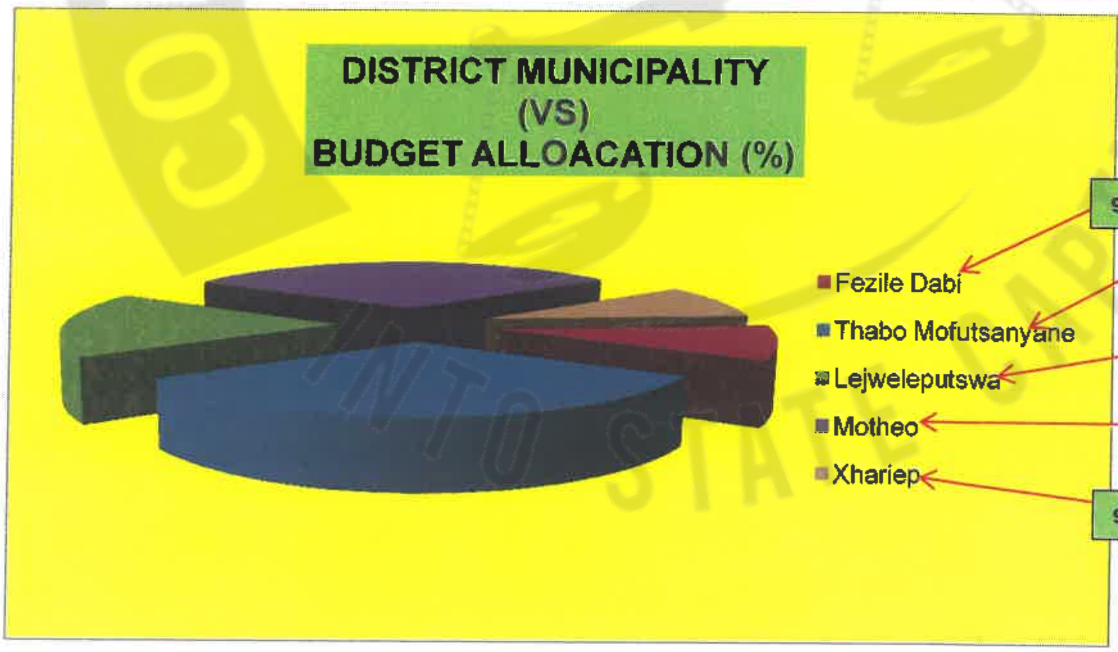
ITEM 1	DESCRIPTION	UNIT	QTY	RATE	AMOUNT
1	Demolish existing building and dispose rubble	each	5 445	R 11 000,00	R 59 895 000,00
2	Construct a New House as complete	each	5 445	R 126 000,00	R 686 070 000,00
3	Handle Asbestos, Strip and Dispose	each	36 303	R 39 312,00	R 1 427 143 536,00
4	Uninstall and Install Geyser complete with electrical	each	10 000	R 4 000,00	R 40 000 000,00
5	Repair and Renovate Existing House	each	30 858	R 43 650,93	R 1 346 980 397,94

Sub total	R 3 560 088 933,94	excl vat
5% Contingencies	R 178 004 446,70	
8% escalation (per year)	R 29 904 747,05	
Sub Total	**R 3 767 998 127,68**	**excl vat**

18. BUDGET ALLOCATIONS PER DISTRICT MUNICIPALITY.

VALUE OF THE WORKS AND BUDGET SPLIT PER DISTRICT MUNICIPALITY.

Description	Value of The Works (excl vat and Excl proffessioanl Fees)
Tile Roof	R 3 850 238 563,82
IBR Sheet	R3 767 998 127,68



19. CHALLENGES

The following are the challenges that were encountered on the project;

- Delayed correspondence from 50% of the Political leadership regarding the submission of Field workers following a formal request. The knock on effect resulted in 50% of the Field workers and area of works being allocate in mid January 2015.
- Fieldworker that did not meet the minimum requirements. The knock on effect resulted in delayed production.
- Field workers delaying to pitch up for training and prolonged absence from work without valid reasons.

20. RECOMMENDATIONS

We recommend the following.

1. We were unable to find any registered landfill licenced to dispose rubble containing Asbesto within the Free State Province. The nearest land fill site in Gauteng (Rooderpoort). The employer can explore other options of having a new landfill site licensed to dispose Asbestos in the following areas;

- Bethlehem to Service Thabo Mofutsanyane District Municipality
- Welkom to Service Lejweleputswa District Municipality
- Zastron to Service Xhariep District Municipality
- Botshabelo to Service Mangaung Metropolitan Municipality
- Hielbron to Service Fezile Dabi District Municipality

Given the circumstances, it will be ideal to start implementation in Fezile Dabi District which is nearer to Gauteng.

2. The implementation can be rolled out over a period of four financial years subject to the availability of funding from the Department.

3. Government to ensure that the handling of Asbestos be done in line with the Municipal by laws and Environmental laws governing the disposal there of. The following are some of the professional services that will be required during implementation of which the cost there of, has been excluded from the calculated and estimated budget indicated above.

- Project Manager
- Environmental Specialist
- Electrical Engineer
- Civil Engineer
- Health and Safety Specialist
- Architect
- Structural Engineer
- Contractors
- Social Facilitator.

4. We advice the Department to fast track implementation process, as some of the home owners have started to remove the asbestos on their own without proper knowledge of the harmful effects and the risk that comes with the nature of the work.

5. The project has been welcome with open hands by members of the community and they are eager to know when will implementation be rolled out.

TRAINING MANUAL

TRAINING MANUAL

ERADICATION OF ASBESTOS ROOFS IN HOUSES IN FREE STATE PROVINCE

2. TYPICAL ENHANCED STRUCTURAL ASSESSMENT FORM

FREE STATE PROVINCE

FREE STATE DEPARTMENT OF HUMAN SETTLEMENT

ASBESTOS ROOF ASSESSMENT FORM

MUNICIPALITY:____________________________

TOWNSHIP:______________________________

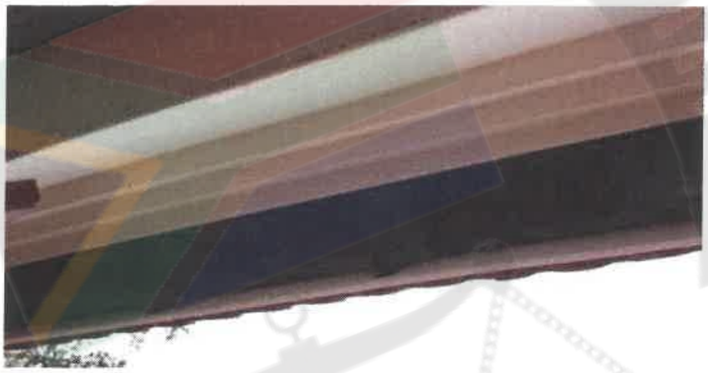
WARD:__________________________________

STRUCTURAL ASSESSMENT (Mobile device Questionnaire)

1	**Erf No:**		
2	**Town/district**		
3	**Roof:**		
	a)Asbestos Take photo for both options (Y/N)	Yes / No	
	b) Type	Pitch	

90

		Flat  Barrel 
4	**Roof rafters**	3 Photos to be taken: • Front view of house  • Side view of house

		 • Under the over hang  	
5	**Ceiling**	Yes No No access	
6	**External walls**	Brick Block	Take photo

		Plaster	
7	**Cracks** **Note 1.**	Yes No	If YES Take a couple of photos for each crack type observes  
9	**Outside Toilet / other structures with Asbestos roofs**	YES NO	

		
10	**Main House Extended**	YES NO If yes, take a photo

Note 1:

The engineer will make the final decision of the bearing of the walls. The only other factor, other than all the above photos is the cracks on the outer walls which is covered in point 7

3. BENEFITS OF FREQUENT "SYNCHRONISATION"

Synchronisation is divided into 2 primary actions:

- Sending your captures (post)
- Downloading updates / work orders (receiving latest updates)

Both actions must be performed frequently.
The benefits of synchronising your captures on a regular basis (frequently) are as follows:

- The more frequent you synchronise, the less time it takes
- It will prevent duplications, as the system is continually being updated
- Enable better project management, as the data is always updated.

The Team Leader must ensure that the whole team synchronises in the morning in their ward at the start point as well as at the end of the day before leaving the ward to go home.

MD-SUP-094

94

"ZDM6"

Department of Human Settlements
FREE STATE PROVINCE

Enquiries: J Matlakala
Director Supply Chain
Human Settlements Free State
Tel: 051 405 5391
Your Ref: IPW - 001
Our Ref: PRT-IPW 001- 004/FS
john@fshs.gov.za / john.tlaks@gmail.com

The Chief Executive Officer
Blackhead Consulting (Pty) Ltd JV
P.O Box 1740
Ruimsig
1732
Attention: Mr Edwin Sodi

RE: Instruction to Perform Work (IPW - 001) Phase 1 - Audit and Assessment of Asbestos of Housing Units

This IPW – 001 serves to instruct you to audit all Pre-1994 Government Issued Housing Units as follows:

1. Audit, Assess and GPS all pre-1994 government housing units in the Province at a rate of R 850-00 vat exclusive per unit up to a maximum of 300 000 units (R255 000 000-00 vat exclusive, hereinafter to be referred to as the total project cost) will be payable for all audited units and it should be noted that all asbestos units are expected to be audited in the Province.

2. The commencement period for the appointment will be effective from 01 December 2014 to 31 March 2015 or earlier.

3. You are expected to submit a completion report within 2 weeks from the date of completion of the project.

4. 40% of the 50% of the total project cost (R51 000 000-00 vat exclusive) is payable on commencement (01 December 2014) subject to submission of a valid tax invoice and valid tax clearance certificate.

5. 60% of the 50% of the total project cost (R76 500 000-00 vat exclusive) cost will be payable as progress certificate no.2 on or before the 01 March 2015.

M

Department of Human Settlements
FREE STATE PROVINCE

6. 40% of the 50% of the total project cost (R51 000 000-00 vat exclusive) will be payable as progress certificate no.3 on or before the 01 May 2015

7. 60% of the 50% of the total project cost (R76 500 000-00 vat exclusive) will be payable as progress certificate no.4 subject to submission of the final project report on or before the 01 June 2015.

8. A minimum liability insurance of R1 000 000-00 is required.

I hope you will find the above in order of your respective purposes.

Regards

N Mokhesi
Head of Department

Date: 2/12/14

M

P.O Box 211, Bloemfontein, 9300
Lebohang Building, 7th Floor, cor St Andrew and Markgraaff Streets, Bloemfontein, 9301

MD-SUP-096

"2047"

SERVICE LEVEL AGREEMENT

entered into between:

DEPARTMENT OF HUMAN SETTLEMENTS

herein represented by NTHIMOTSE MOKHESI in his capacity as Head of Department

("the DEPARTMENT")

And

BLACKHEAD CONSULTING (PTY) LTD JOINT-VENTURE

herein represented by EDWIN SODI in his capacity as the Chief Executive Officer

("the SERVICE PROVIDER")

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:

1. **Definitions and Interpretation**

1.1 The following terms, unless the context indicates otherwise, shall have the meanings assigned to them hereunder and similar expressions shall have corresponding meanings, namely:

"Agreement" – the agreement signed by the Parties of which the Annexures referred to herein forms part;

"DEPARTMENT" means the Department HUMAN SETTLEMENTS FREE STATE;

"SERVICE PROVIDER" means BLACKHEAD CONSULTING (Pty) Ltd and DIAMOND HILL TRADING 71 (Pty) Ltd Joint-Venture;

"Parties" means the DEPARTMENT and SERVICE PROVIDER;

"Payment of services" means payment of services in terms of the attached costs breakdown; and

"Project" means appointment of the SERVICE PROVIDER to assess/audit houses roofed using asbestos material, handling and disposal of asbestos sheets to an approved, designated disposal site.

1.2 The headings in this document are used for ease of reference only and will have no bearing on the interpretation of the terms of this Agreement.

1.3 The words importing -

(a) any one gender includes the other two genders;

(b) the singular include the plural and vice versa; and

(c) natural persons include created entities (corporate or non-incorporate) and vice versa.

2. **Working relationship**

The DEPARTMENT appoints the SERVICE PROVIDER to assess/audit houses roofed using asbestos material, handling and disposal of asbestos sheets to an

INITIAL ONLY:

DEPARTMENT: .... Witness: (1) .... Witness: (2) ....

SERVICE PROVIDER: .... Witness: (1) .... Witness: (2) ....

approved, designated disposal site.

3. Duration

The Agreement commences on the last party signing and terminates on 31 August 2017.

4. Responsibilities of Parties

4.1 The SERVICE PROVIDER shall –

4.1.1 execute the project in line with this Agreement, the approved Instruction to Perform Work and the applicable legislations and regulations.

4.1.2 on becoming aware of any matter which shall materially change or has changed the scope, cost or timing of the services or the works, the SERVICE PROVIDER shall give notice to the DEPARTMENT.

4.1.3 not undertake any work without the necessary Instruction to Perform Work signed by the Head of Department or the delegated official.

4.1.4 provide the DEPARTMENT with the costs breakdown of the services connected with the project.

4.2 The SERVICE PROVIDER undertakes that:

4.2.1 they have the capacity to and are able to enter into this Agreement;

4.2.2 they have all the necessary experience skill and capability to render the service in accordance with the requirements and expectations of the DEPARTMENT; and

4.2.3 they are not restricted or prohibited by any other agreement, arrangements or understandings whether written or oral, with any third party from entering into this Agreement with the DEPARTMENT.

4.3 The DEPARTMENT shall –

4.3.1 pay for the services of the SERVICE PROVIDER in accordance with the costs breakdown as agreed and the approved Instruction to Perform Work; and/or upon signing of the appointment letter.

4.3.2 transfer payment to the SERVICE PROVIDER in terms of the prescripts of the Public Finance Management Act, 1999 (Act No.1 of 1999), as amended and be effected in the South African Rand.

4.3.3 transfer payment to the SERVICE PROVIDER within 30 (thirty) days of receipt of the certified invoice from the SERVICE PROVIDER.

4.3.4 the SERVICE PROVIDER's invoices submitted throughout the term of this Agreement shall not exceed the amount indicated in the contracted and budgeted costs.

4.3.5 all invoices for the SERVICE PROVIDER's services may be submitted to the Department by the SERVICE PROVIDER upon approval by the Department of the completion of each Instruction to Perform Work.

4.3.6 the SERVICE PROVIDER's invoice shall be submitted together with a report by the SERVICE PROVIDER, clearly evidencing the service rendered as per the approved Instruction to Perform Work, which invoice and report shall be to the satisfaction of the Department.

4.3.7 the Department shall be entitled to verify the amount claimed in the invoice or appoint an independent expert to verify the amount.

4.3.8 if the Department disputes, in good faith, any amounts, or the calculation, composition or supporting information evidencing any amount set out in an invoice or if the Department disputes in good faith the specific service rendered, the Department shall be entitled to withhold payment of the amount so disputed.

4.3.9 the parties shall liaise and use reasonable endeavors to agree on the disputed amount. Where the disputed amount is not agreed within ten (10) business days either party may refer the matter for resolution in terms of paragraph 7 hereunder.

4.3.10 all amount payable in terms of this Agreement shall be inclusive of VAT (Value Added Tax).

4.3.11 the Department shall at all reasonable times and with prior written notice have access to (including the right to reproduce) all records and documentation required by the SERVICE PROVIDER to be kept in relation to the services for the purpose of auditing, quality control and monitoring of the services by the Department.

4.3.12 the Department may carry out such monitoring and/or audit of the quality of services as it may from time to time require, which monitoring may include the conducting of audits, spot checks, quality assessments, third party monitoring and independent reviewing and auditing of the SERVICE PROVIDER provision of the services as well as periodic performance meetings with the SERVICE PROVIDER to discuss, review and assess performance and identify trends, problem areas and remedying actions to be taken by the SERVICE PROVIDER.

5. Default and termination

5.1 The Parties shall be deemed to have committed an act of default in terms of this Agreement if any Party -

(a) fails or is likely to fail in the due performance of its obligations in terms of this Agreement; and/or

(b) is placed under judicial management, liquidation, sequestration (whether provisional or final); and/or

(c) fails to comply with any other provision of this Agreement.

5.2 In the event of either Party being deemed to have committed an act of default, the other Party may give written notice, calling upon the defaulting party within a period of 5 (five days) after the date of such notice, to rectify the deemed act of default.

5.3 Failure to comply with the terms of the notice referred to in clause 5.2 shall entitle the Party to terminate the Agreement forthwith without prejudice to any other right or remedy it may have in law.

5.4 Should funds no longer be available to pay for the execution of the responsibilities of the DEPARTMENT, the DEPARTMENT may terminate this Agreement in its own discretion or temporarily suspend all or part of the services by notice to SERVICE PROVIDER who shall immediately make arrangements to stop the performance of the services within reasonable time and minimize further expenditure: Provided that SERVICE PROVIDER shall thereupon be entitled to payment in full for the services delivered, up to the date of cancellation.

6. Indemnification

SERVICE PROVIDER accepts full responsibility for the project and indemnifies the DEPARTMENT against any claim from any person, whether as a result of loss or injury which occurred as a result of or in connection with the project.

INITIAL ONLY:

DEPARTMENT: ....M.......... Witness: (1) .... Witness: (2) ....

SERVICE PROVIDER: .... Witness: (1) .... Witness: (2) ....

7. **Disputes**

If any dispute or difference of any kind whatsoever arises between the Parties in connection with or arising out of the Agreement, any Party may approach the Court to settle such dispute or difference.

8. **Jurisdiction**

This Agreement shall be construed according to the laws of the Republic of South Africa. The Free State High Court shall be the competent court with regards to this Agreement.

9. **Cession/assignment**

The Parties may not cede or assign this Agreement or any of the rights it has in terms of this Agreement to any other person without prior approval of the other Party.

10. **Confidential and Disclosure**

10.1 The SERVICE PROVIDER acknowledges that all information imparted to it by the DEPARTMETN is of a confidential nature and is made known to the SERVICE PROVIDER only for purposes of providing services to the DEPARTMENT.

10.2 The SERVICE PROVIDER undertakes to maintain the confidentiality of all information (including the provisions of this Agreement) imparted to it by the DEPARTMENT and not to disclose any such information to any third party for whatever reason without the prior written consent of the DEPARTMENT.

11. **Intellectual Property rights**

11.1 The ownership of the intellectual property rights in this Agreement shall be owned by the DEPARTMENT on payment of the SERVICE PROVIDER's fees, due, owing and payable for such service or product.

11.2 All pre-existing intellectual property rights, including materials provided by the parties, shall continue to be owned by the party to whom title to such property originally vested prior to this Agreement.

11.3 The SERVICE PROVIDER may not use the intellectual property rights in paragraph 8.1 above without the consent of the DEPARTMENT, which consent may not be unreasonably withheld.

12. *Domicilia* and notices

12.1 The Parties choose as their *domicilium citandi et executandi* as set out hereunder:

DEPARTMENT:
Room 749, 7th floor
c/o Markgraaff & St. Andrew Streets
BLOEMFONTEIN
9301

Tel. No: (051) 405 4727
Fax. No: (051) 403 3699
Email: hodhs@fshs.gov.za

SERVICE PROVIDER :
Unit 9,Willowbrook Office Park,
Van Der Kloof Street
Ruimsig, 1732

Tel. No: (011) 958 2248
Fax No: 011 958 0065
Email: igo@diamond-hill.co.za
edwinsodi@blackhead.co.za

12.2 Parties undertake to notify each other, in writing, of any change of its domicilium or any other address.

12.3 Any notice and any communication or payment made by one party to the other ("the addressee") shall be deemed to have been properly given, in the absence of proof to the contrary -

(a) if delivered by hand, on the date of delivery;

(b) if sent by prepaid registered post, 7 (seven) days after the date on which the notice is posted;

INITIAL ONLY:

DEPARTMENT: ....M.............. Witness: (1) .... Witness: (2) ....

SERVICE PROVIDER: .... Witness: (1) .... Witness: (2) ....

(c) if sent to the addressee at its telefax number, on the date of transmission where it is transmitted during normal business hours of the receiving instrument, and on the next business day where it is transmitted outside those business hours, in either event provided that it has been confirmed by registered letter posted no later than the business day immediately following the date of transmission.

13. Entire agreement and variations

13.1 This Agreement constitutes the whole Agreement between the Parties and supersedes all prior verbal or written agreements or understandings or representations by or between the Parties regarding the subject matter of this Agreement, and the Parties will not be entitled to rely, in any dispute regarding this Agreement, on any terms, conditions or representations not expressly contained in this Agreement.

13.2 No variation of or addition to this Agreement will be of any force or effect unless reduced to writing and signed by or on behalf of the Parties.

13.3 Neither party to this Agreement has given any warranty or made any representation to the other party, other than any warranty or representation which may be expressly set out in this Agreement.

13.4 No relaxation or indulgence which either Party may grant to the other Party shall constitute a waiver of rights of such Party and shall not preclude such Party from exercising any of its rights which might have arisen in the past or which might arise in the future.

SIGNED at.................................. on this ....

in the presence of the undersigned witnesses

....

(Signature of DEPARTMENT)

Witnesses:

1. ....

(Signatures of witnesses)

SIGNED at..................................on this ....

in the presence of the undersigned witnesses

....

(Signature of SERVICE PROVIDER)

Witnesses:

1. ....

2. ....

(Signatures of witnesses)

INITIAL ONLY:

DEPARTMENT: .... Witness: (1) .... Witness: (2) ....

SERVICE PROVIDER: .... Witness: (1) .... Witness: (2) ....

MD-SUP-105

105

Human Settlements
Department of Human Settlements
FREE STATE PROVINCE

Enquiries: J Matlakala
Director Supply Chain
Human Settlements Free State
Tel: 051 405 5391
Your Ref: VA 49/430/1
Our Ref: PRT 003/FS

The Chief Executive Officer
Blackhead Consulting (Pty) Ltd JV
P.O Box 1740
Ruimsig
1732
Attention: Mr Edwin Sodi

RE: Appointment as a Professional Resource Team (PRT) for Eradication of Asbestos in the Free State Province

After due consultation with the Department of Human Settlements – Gauteng Province and concurrent approval by Free State Provincial Treasury it is with great pleasure to announce that you have been duly appointed to as a Professional Resource Team to assist the Free State Department of Human Settlements in Eradicating Asbestos in the Free State Province.

The Department wishes to advise that your company has been exclusively appointed for the audit and assessment of asbestos, handling of hazardous material, removal and disposal of asbestos-contaminated rubble and replacement with SABS approved materials in the Free State Province.

You will be expected to sign a Service Level Agreement (SLA) with the Head of Department or his duly designated official. The contract will stipulate among others, the duration of the contract, payment arrangement and other general conditions. You will be issued with an instruction to perform work (IPW) based on an approved project milestones for each phase to be completed.

I hope you will find the above in order of your respective purposes.

Regards

N Mokhesi
Head of Department

Date: 1/10/14

MD-SUP-106

"20M8"

AUDIT,HANDLING OF HAZARDOUS MATERIAL, REMOVAL AND DISPOSAL OF ASBESTOS-ROOFED HOUSES

Submitted to:

DEPARTMENT OF HUMAN SETTLEMENTS-FREE STATE PROVINCE

human settlements

Department of Human Settlements FREE STATE PROVINCE

ATTENTION: Mr. Mokhesi

MAY 28, 2014

Submitted by:

blackhead CONSULTING

Diamond Hill Trading 71

Office 09 Block B Willowbrook Office Park
Van Der Kloof Street Ruimsig, 1732 Tel: 011 053 6442 / 958 2248, Fax: 011 958 0065
Contact Person: Mr. Ignatius Mpambani
Cell: 079 161 4943
E-mail: igo@diamond-hill.co.za

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15/11/2014

MD-SUP-107

"2DM8"

blackhead
CONSULTING

CONSULTING ENGINEERS AND PROJECT MANAGERS

Diamond Hill Trading 71

28 MAY 2014

Department of Human Settlements – Free State
7th Floor, Lebohang Building,
Corner Markgraaff & St. Andrew Street, Bloemfontein,
9300

Dear Sir / Madam

REQUEST FOR APPOINTMENT ON RISK: AUDIT AND ASSESMENT, HANDLING OF HAZARDOUS MATERIAL (REMOVAL) AND DISPOSAL OF ASBESTOS-CONTAMINATED RUBBLE IN THE FREE STATE PROVINCE

We have a pleasure in submitting our request to be appointed on risk basis for the following:

- Assessment / Audit of houses roofed using Asbestos material,
- Handling and disposal of Asbestos Sheets to an approved, designated disposal-site.

The scope of the work entails the physical door to door counting, safe removal and disposal of Asbestos- Contaminated Building Rubble and asbestos sheets from various townships across the Free State Province.

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blackhead
CONSULTING

CONSULTING ENGINEERS AND PROJECT MANAGERS

INTRODUCTION

The right of South African citizens to access to adequate housing is entrenched in the bill of rights in the supreme legislation of South Africa, the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996), Sections 26. The Constitution makes it incumbent upon the State to take reasonable legislative and other measures within its available resources to achieve the progressive realization of this right.

The Free State Provincial Government will task the Free State Department of Human Settlements to embark on a project to eradicate asbestos roofs from all housing units in the province.

Health implications associated with exposure to airborne asbestos fibres were first highlighted in the 1930's and specific links to certain cancers were made in South Africa in the early 1960s.

Despite these undisputable facts on health risks, products containing asbestos continued to be used in housing for non-white South Africans during the Apartheid era.

Old township houses that were built by the previous Apartheid Government have subsequently been transferred into the ownership of the inhabitants. This property transfer also meant the transfer of risks and liabilities that come with home ownership. The health risk of living in asbestos roofed houses was thus also transferred to the beneficiaries of these properties.

A very large number of such houses were transferred to indigent people who rely solely on Government Pensions, Grants and a number of other forms of Government assistance. They thus hardly have money for home insurance or money for maintenance and repairs to their properties let alone money to replace the entire roof structures to protect themselves and their families from diseases caused by exposure to asbestos fibre.

M

blackhead
CONSULTING

CONSULTING ENGINEERS AND PROJECT MANAGERS

BACKGROUND

In 2008 the Government of South Africa banned the use of asbestos and asbestos fibre in any product. This ban was a reflection of the commitment of the Government to creating better lives for the people of South Africa. As a component of this commitment the Free State Provincial Government acknowledges that a large number of township houses, hostels and flats delivered by the government of the past were roofed with asbestos roof sheets.

Many parts of the country have recently experienced effects of global warming climate change which has come with extreme weather patterns. Recent flash-flood-rains and hailstorms have left paths of destruction to residential properties mainly to the roofs and windows of such properties. Even though not only houses roofed with asbestos sheets were damaged, the exercise of verification, assessment and remedial works planning for repairs has highlighted the need to address the eradication of asbestos roofs as many such roofs were damaged in the storms.

An informal study in the Free State Province has indicated that the asbestos sheets in a large number of the old township houses have deteriorated to great extents with cracks and breakages that most likely release dust particles into the air which is the very cause of asbestos associated diseases. Regulations for the prohibition of the use, manufacturing, import and export of asbestos and asbestos containing materials formed part of the Environment Conservation Act of 1989.

Access to quality, sustainable housing is entrenched in our Constitution and Breaking New Ground Strategy and thus is an important aspect of redressing (deliberate) deficiencies of the past in our country.

M

blackhead
CONSULTING

CONSULTING ENGINEERS AND PROJECT MANAGERS

OBJECTIVE

The objective of the project is two-fold:

- Quantify the number of houses roofed with asbestos sheets, and
- Remove and dispose asbestos to an approved and accredited disposal site.

RATE PER HOUSE

Our rates are as follows:

Door to door assessment = **R1350 per house Excl VAT.**

Removal and disposal to an approved designated site = **R32 760 Excluding VAT.**

Kindly note that as the project is undertaken on a Risk basis, Diamond Hill / Blackhead Consulting will identify and secure funds on behalf of the Free State Provincial Government for the above costs.

blackhead
CONSULTING

CONSULTING ENGINEERS AND PROJECT MANAGERS

SCOPE OF WORK

All Asbestos will be removed and disposed of as laid out in the **Occupational Health and Safety Act and Regulations 85 of 1993**

The above unit rate includes the following:

- Submitting a Works Plan to an Approved Inspection Authority of Approval.
- Notifying the Department of Labour in writing of our intention to remove and dispose contaminated rubble Asbestos.
- Contract the services of an Approved Inspection Authority for the purpose of air monitoring.
- Supply experienced, medically fit staff and supervision for the purpose of removal.
- The supply of all safety equipment and relevant P.P.E.
- Cordon-off the area to be stripped and place relevant signage.
- Transport of the Asbestos to a registered disposal site.
- Disposal cost of the Asbestos.
- All relevant paper work pertaining to Health and Safety Legislation

TERMS

- All rates exclude VAT

Yours faithfully,

E. Sodi

EDWIN SODI
CEO - Blackhead Consulting

M

lgo@diamond-hill.co.za

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SARS

South African Revenue Service

Tax Clearance Certificate Number
0084/1/2014/0005642817

Tax Clearance Certificate - Tender

Enquiries
0800 00 7277
Approved Date
2014-01-28
Expiry Date
2015-01-28

Company Registration Number	2011/011664/07
Income Tax	9209770156 - BLACKHEAD CONSULTING
VAT/Diesel Registration	4460223243 - BLACKHEAD CONSULTING CC
PAYE Registration	7660782709 - BLACKHEAD CONSULTING (PTY) LTD
UIF Registration	U660782709 - BLACKHEAD CONSULTING (PTY) LTD
SDL Registration	L660782709 - BLACKHEAD CONSULTING (PTY) LTD
Tender Number	

It is hereby confirmed that, on the basis of the information at my disposal, the above-mentioned taxpayer has not contravened the provisions of Income Tax Act (1962), Value Added Tax Act (1991), Employees Tax (PAYE as contained within the IncomeTax Act 1962), Skills Development Levies Act (1999) or Unemployment Insurance Contributions Act (2002), as at date of this certificate.

This Certificate is Valid for a period of 1 (One) Year from the date of approval.

Verification of this certificate can be done at any SARS Revenue office nationwide.

Photo copies of this certificate are not valid.

SARS reserves the right to withdraw this certificate at any time should any taxes, levies or duties become due and outstanding by the above taxpayer during the one year period for which the certificate is valid.

This certificate is issued free of charge by SARS.

Subject FW: Lyco doc 2
From Moroadi Cholota <premier@fspremier.gov.za>
To <igo@diamond-hill.co.za>, IGO MPAMBANI <mpambani@yahoo.com>
Date 2015-08-12 13:10

Good Day.

This was the initial request send to the Premier.

Regards:

Moroadi Cholota.

From: Refiloe Mokoena [mailto:refiloe.msiza@gmail.com]
Sent: 17 July 2015 11:50 AM
To: premier@fspremier.gov.za
Subject: Fwd: Lyco doc 2

Dear Premier

Herewith please find the necessary documents for purposes of settling my daughter's university account.

Please note that the annual fees payable after receiving the scholarship is approximately US$24298.. The semester amount payable before 31 July 2015 is however US$12149.00

Kindly go to the link provided in their email and use the following access code to pay namely:

Username: kagisonmsiza@gmail.com

Password: Kagiso96.

Please acknowledge receipt and let me know if you will also be paying for her travelling and living expenses as well.

I take this opportunity to thank you from the bottom of our hearts for your assistance. I have no doubt that my daughter will make good use of this opportunity.

God Bless

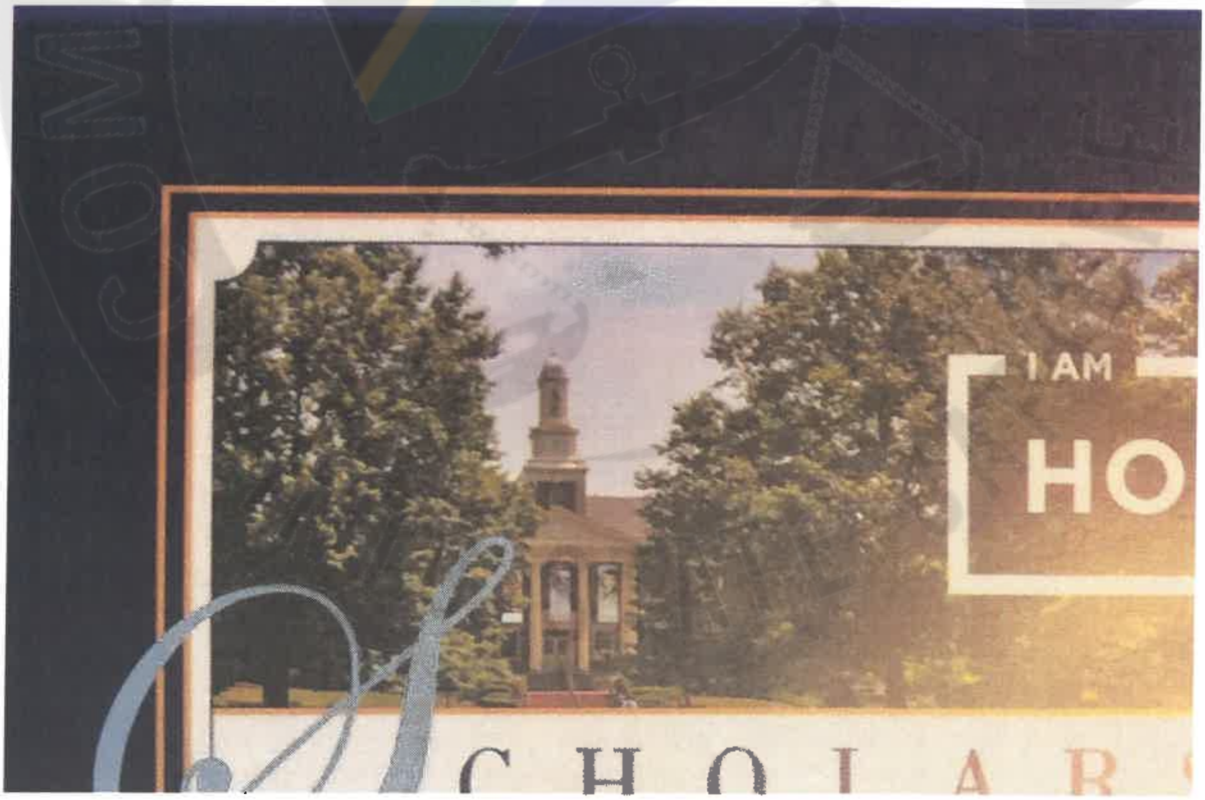
Refiloe Mokoena

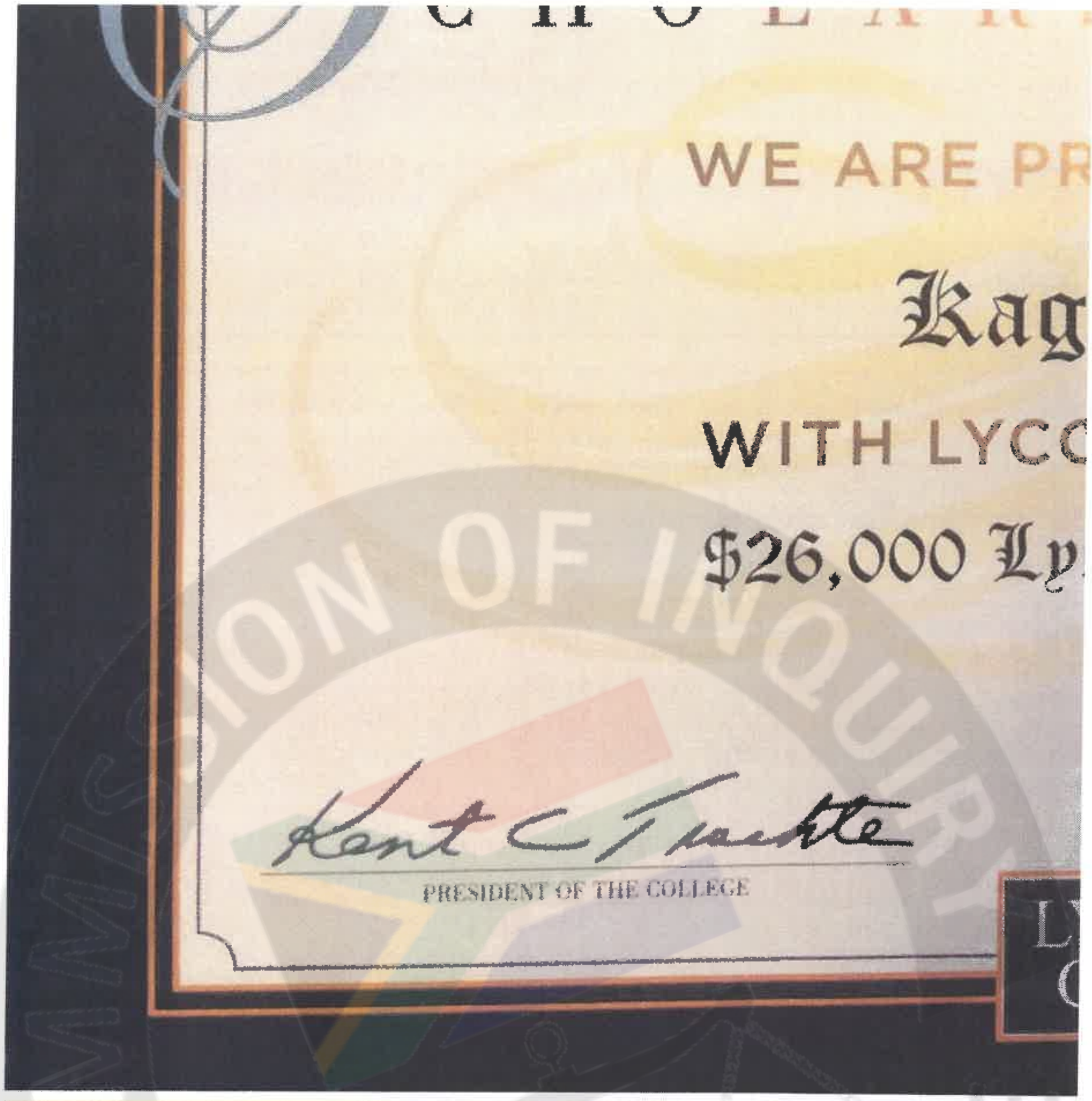
0814704340

Sent from my iPad

Begin forwarded message:

> **From:** Kagiso Msiza <kagisonmsiza@gmail.com>
> **Date:** 08 July 2015 at 9:29:52 PM SAST
> **To:** Refiloe Mokoena <refiloe.msiza@gmail.com>
> **Subject: Lyco doc 2**




WE ARE PR

Kag

WITH LYCO

$26,000 Ly

Kent C Trachte

PRESIDENT OF THE COLLEGE

February 18, 2015

Kagiso Msiza
8 Meyer Street Oaklands

Johannesburg, Gauteng 2192

Congratulations:

On behalf of the faculty and students at Lycoming College I am pleased to
beginning with the fall 2015 term. With this letter you are invited to becom
203rd class to attend Lycoming.

If you are interested in a quality, personalized educational community of ac
for you. Our facilities are excellent, but it's the faculty to whom students an
Professors at Lycoming are scholars in their fields of study, and you'll com
When you combine their teachings with our explorative liberal arts curricul
learning that prepares you for real world professions and a lifetime of succe

I believe you'd be proud to attend Lycoming College. It's an inviting and h
students. Our graduates successfully pursue their dreams and include a Puli
Award winner, a U.S. Congressman, the Governor of state of Puebla (Mexi
Woman in the US' and several chief executives with Fortune 100 companie
GlaxoKlineSmith.

Our international students are highly successful in and out the classroom. T
their talents in leadership and service within the Lycoming and Williamspo
year educational journey, our students are successful as they apply for vario
schools. Some of international alumni are now doctors, attorneys, scientists
government leaders, and business persons

If you're ready to make your decision to enroll at Lycoming you may make
http://www.lycoming.edu/deposits or any time before May 1, 2015.

Sincerely,

Michael Konopski
Vice President for
Enrollment Management

LYCOMING COLLEGE

OFFICE OF ADMISSION

About your Scholarship and Other Import

We are pleased to offer you an International Student Scholarship of
awarded on the basis of the following:

116

- Academic promise
- Quality of courses taken in secondary school and/o
- Grades
- Results of SAT, ACT, TOEFL, or IELTS

The estimated cost to attend Lycoming College for 2015-16 is:

Tuition, room, board, fees, insurance	$47,000
Less Scholarship	26,000
Approximate balance	$21,000

In addition, books and supplies will cost up to $1,200 per year. Pers
around $100 per month.

Future Tuition Increases—Your Scholarship will be renewed ann time student in good academic standing. Please note--Tuition, r increase 3-4% per year. Because the pool of money available for amount, your scholarship will not increase while you are a stude

All Lycoming students are required to live in one of eight residence h purchase the meal plan. One of our residence halls, usually Forrest, holidays.

All International Students are required to arrive on campus Aug Student Orientation will be held from August 17-20. Orientation

We offer airport pickup on August 15th, 16th, and 17th - the three opti
1.) **Flight into Williamsport Regional Airport (IPT)** in Pennsylvania College after landing – 5 minute drive.
2.) **Flight into Harrisburg International Airport (MDT)** in Pennsylv from pick up.
3.) **Flight into Kennedy International Airport (JFK)** – Three hour d

All international students are also required to purchase medical insu Lycoming College. As of this writing, the cost is $1 235 per year. Du duty 8:00AM-4:30PM weekdays and a doctor is available 1-2 hours is located one mile from the campus.

Employment– The College pays its student employees $7.25 per ho hours per week during the school year and may earn up to 37.5 hou

IMPORTANT DATES

Fall Semester
2015 August 21—December 11

LYCOMING COLLEGE

8-May-15

Kagiso Msiza
8 Meyer Street
Oaklands
Johannesburg 2192 South Africa

You will be registering for your Fall 2015 classes when you arrive for orientation in August.
To allow you to pay your balance by the Fall due date, the following is an estimated bill for the semester.
Please keep in mind your second semester bill will not include the Student Health Insurance or New Student Orientation Fee.

Full Time Resident Student Costs

Tuition	17,600.00
Student Health Insurance	1,532.00
Activity fee	85.00
New Student Orientation Fee	225.00
Room Rent	2,776.00
Board	2,666.00
Laundry Fee	40.00
Technology Fee	225.00
Resident student total charges	25,149.00
Less Estimated Financial Aid:	
International Grant	13,000.00
Total Financial Aid	13,000.00
Total due for resident student:	12,149.00

The balance is due on or before July 31, 2015. Once you have registered for classes, you will have the opti of waiving the student health insurance providing you have comparable coverage. Below is the link to waive the health insurance.

Lycoming College has partnered with peerTransfer Corporation to provide you and your family with a more convenient and efficient method of sending international payments to the school by going to the link below. If I can be of further assistance, please let me know.

Sincerely,
Cindy Springman
Bursar
spring@lycoming.edu
570-321-4032

Student Health Insurance Waiver Link
http://firststudent.com/schools/LycomingCollege.htm

Wiring Payment Link
https://www.peertransfer.com/school/lycoming/

Subject **RE: Payment**
From Moroadi Cholota <premier@fspremier.gov.za>
To Ignatius Mpambani <igo@diamond-hill.co.za>
Date 2015-08-18 09:57

Good Morning.

Proof of payment received and acknowledged. Thank you very much.

Regards:
Moroadi Cholota
Personal Assistant to Premier: Office of the Premier

Private Bag X20538

BLOEMFONTEIN

9300

Tel: +27 (0)51 405 5942

Fax: +27 (0)51 403 3987
Fax to E Mail: +27 (0)86 215 8310

E Mail: premier@fspremier.gov.za

www.fs.gov.za <http://www.fs.gov.za/>

-----Original Message-----
From: Ignatius Mpambani [mailto:igo@diamond-hill.co.za]
Sent: 17 August 2015 07:24 PM
To: Moroadi PA Premier FS
Cc: Moroadi PA Premier FS
Subject: Payment

Good day,

Kindly find the proof of payment for $4000, regards.

Ignatius Mpambani

MD-SUP-119

"2DM 11" 119

roundcube

Subject **Requeste for payment**
From Moroadi Cholota <premier@fspremier.gov.za>
To <igo@diamond-hill.co.za>
Copy <morakeio233@gmail.com>
Date 2015-05-06 12:34

- DOC007.pdf (~81 KB)

Good Day.

Following the discussion with Ipeleng Morake , Premier requested that you pay full amount of R 470 000.00 and the remaining amount of R30 000.00 to one of the SRC President in Cuba.

ACC HOLDER: S.W.C Nkate

ACC NO: 62412467806

ACCOUNT: FNB BANK

AMOUNT : R30 000.00

Hope the above is in order.

Regards:

Ipeleng Morake

MD-SUP-120

120
"2014/13"

roundcube

Subject	**Request for Funding**
From	Moroadi Cholota <premier@fspremier.gov.za>
To	'Ignatius Mpambani' <igo@diamond-hill.co.za>
Date	2016-01-28 13:16

Good Day.

Kindly find the below Details as discussed telephonically.

Account Name: Astra Travel

Account Number: 470179252

ABSA Bank

Cheque Account

Amount : R250 000.00 (Two Hundred and fifty thousand Rand)

Please do send the proof of payment to the above E-mail address.

Thanking you in advance.

Thank you in advance.

Warm regards:

THE PREMIER
FREE STATE PROVINCE

Moroadi Cholota
Personal Assistant to Premier: Office of the Premier

Private Bag X20538

BLOEMFONTEIN

9300

Tel: +27 (0)51 405 5942

Fax: +27 (0)51 403 3987
Fax to E Mail: +27 (0)86 215 8310

E Mail: premier@fspremier.gov.za

www.fs.gov.za

Subject **RE: Invoice**
From Moroadi Cholota <premier@fspremier.gov.za>
To Ignatius Mpambani <igo@diamond-hill.co.za>
Date 2016-02-02 09:07

roundcube

Afternoon.

Kindly note that the proof of payment is well received and appreciated.

Warm regards:
Moroadi Cholota
Personal Assistant to Premier: Office of the Premier

Private Bag X20538

BLOEMFONTEIN

9300

Tel: +27 (0)51 405 5942

Fax: +27 (0)51 403 3987
Fax to E Mail: +27 (0)86 215 8310

E Mail: premier@fspremier.gov.za

www.fs.gov.za <http://www.fs.gov.za/>

-----Original Message-----
From: Ignatius Mpambani [mailto:igo@diamond-hill.co.za]
Sent: 29 January 2016 04:55 PM
To: Moroadi Cholota
Subject: Re: Invoice

Received, will send pop accordingly, regards.

Ignatius

> On 29 Jan 2016, at 16:35, Moroadi Cholota <premier@fspremier.gov.za> wrote:
>
> Good Afternoon.
>
> Kindly find the attached Invoice as discussed.
>
> Hope you will find it in order.
>
> Regards:
> Moroadi Cholota
> Personal Assistant to Premier: Office of the Premier
>
> Private Bag X20538
>
> BLOEMFONTEIN
>
> 9300
>
> Tel: +27 (0)51 405 5942
>
> Fax: +27 (0)51 403 3987
> Fax to E Mail: +27 (0)86 215 8310
>
> E Mail: premier@fspremier.gov.za
>
> www.fs.gov.za <http://www.fs.gov.za/>

Subject **Fwd: Account numbers**
From Ipeleng Morake <morakeio233@gmail.com>
To Ignatius Mpambani <igo@diamond-hill.co.za>
Date 2015-04-10 19:19

See below bank details. I just don't have details for Unisa. Will forward as soon as I get them

---------- Forwarded message ----------
From: Moroadi <moroadicholota@gmail.com>
Date: Friday, April 10, 2015
Subject: Account numbers
To: "Morakeio233@gmail.com" <Morakeio233@gmail.com>

Ausi Ipe pls find below as discussed.

CUT STANDARD BANK

Acc no: 2404 544 05
Branch no: 05-55-34
Acc type: business current acc
Ref: student number or ID no

UFS/ UOFS ABSA BANK ACC NO: 1570 151 688
BRANCH NO: 630734

REF: 605 THEN STUDENT NUMBER

REF: STUDENT NUMBER OR ID NO.

NWU ABSA BANK

ACC NO: 4070099350

BRANCH NO: 632005

REF: STUDENT NUMBER

NWU Standard bank
Acc no: 330384465
Branch: 052838
Ref: student number

Regards:

<image001.jpg>

Moroadi Cholota
Personal Assistant to Premier: Office of the Premier

Private Bag X20538

BLOEMFONTEIN

9300

Tel: +27 (0)51 405 5942

Fax: +27 (0)51 403 3987
Fax to E Mail: +27 (0)86 215 8310

E Mail: premier@fspremier.gov.za

www.fs.gov.za

<DOC007.pdf>

"ZDM14"

FREE STATE ASBESTOSERADICATION PROJECT						
Nr of Units	Rate P/U	Project Value	Year 1			
300 000.00	850.00	255 000 000.00			51 000 000.00	
COST OF BUSINESS						
TZ	10 000 000.00		5 000 000.00	2 000 000.00	2 000 000.00	3 000 000.00
TM	5 000 000.00		2 500 000.00	1 000 000.00	1 000 000.00	1 500 000.00
AM	10 000 000.00		5 000 000.00	2 000 000.00	2 000 000.00	3 000 000.00
OM	1 000 000.00		500 000.00	200 000.00	500 000.00	-
MEC	2 500 000.00		1 250 000.00	500 000.00	1 000 000.00	250 000.00
MASTERTRADE	44 208 567.90		44 208 567.90	17 683 427.16	17 683 427.16	4 400 000.00
OTHERS	2 000 000.00		1 000 000.00	400 000.00	750 000.00	
MARTIN	1 500 000.00		1 500 000.00	600 000.00	600 000.00	
STEVE	1 200 000.00		1 200 000.00	480 000.00	480 000.00	
RANTWA	1 200 000.00		1 200 000.00	480 000.00	480 000.00	
JT	3 000 000.00		1 500 000.00	600 000.00	600 000.00	
Diedricks	1 000 000.00					
2013-2014		127 500 000.00	64 858 567.90	25 943 427.16	27 093 427.16	
Total Cost of Business	82 608 567.90					
Project Value-Cost of Business	172 391 432.10				23 906 572.84	
Blackhead	86 195 716.05				11 953 286.42	
Diamond Hill	86 195 716.05				11 953 286.42	
2013-14 FINANCIAL YEAR	127 500 000.00			12 971 713.58		
2014-15 FINANCIAL YEAR	127 500 000.00			12 971 713.58		

Upfront Payments

4 400 000.00

1st Payment	2nd Payment	3rd Payment
20 000 000.00	31 000 000.00	25 000 000.00
1 000 000.00	1 000 000.00	1 000 000.00
1 000 000.00	1 000 000.00	500 000.00
1 000 000.00	1 000 000.00	1 000 000.00
200 000.00		300 000.00
1 000 000.00		1 500 000.00
13 283 427.16		13 000 000.00
1 000 000.00		1 000 000.00
500 000.00	100 000.00	900 000.00
	1 000 000.00	
		500 000.00
500 000.00		500 000.00
19 483 427.16		
-	5 400 000.00	
500 000.00		
19 983 427.16	9 500 000.00	

Profit	21 500 000.00	
Diamond Hill	10 750 000.00	2 400 000.00
Blackhead	10 750 000.00	2 400 000.00
	16 150 000.00	
	18 250 000.00	25 000 000.00

"ZDM 14"

MD-SUP-124

ORIGINAL

IN THE HIGH COURT OF SOUTH AFRICA

FREE STATE DIVISION, BLOEMFONTEIN

CASE NO: **241/2016**

In the matter between:

THE MEMBER OF THE EXECUTIVE COUNCIL OF THE DEPARTMENT OF CO-OPERATIVE GOVERNENCE, HUMAN SETTLEMENTS AND TRADITIONAL AFFAIRS, FREE STATE PROVINCE — APPLICANT

08 -03- 2019

FREE STATE DIVISION • BLOEMFONTEIN

and

SCENIC ROUTE TRADING 802 CC AND THE 105 FURTHER RESPONDENTS LISTED IN ANNEXURE 1 OF THE APPLICANTS NOTICE OF MOTION — 1ST RESPONDENT

NOTICE OF REMOVAL

BE PLEASED to take notice that the hearing which has been set down for the 18th day of **MARCH 2019** is removed from the roll.

DATED at BLOEMFONTEIN on this 5th day of MARCH 2019.

pp

L E COMPANIE
ATTORNEY FOR PLAINTIFF
PHATSHOANE HENNEY
35 MARKGRAAFF STREET
WESTDENE
BLOEMFONTEIN
(REF: DEP52-PH/074/LEC/elr)

AND TO:
M D MATLHO
MATLHO ATTORNEYS
ATTORNEYS FOR 24TH, 29TH &
30TH RESPONDENTS
65 KELLNER PARK, SUITE 2
KELLNER STREET
WESTDENE
BLOEMFONTEIN

AND TO:
M KHANG
MPHAFI KHANG INC.
ATTORNEYS FOR 11TH & 67TH
RESPONDENTS
96 IUSTITIA BUILDING
ALIWAL STREET
BLOEMFONTEIN

AND TO:
MOROBANE INC
ATTORNEY FOR 94TH & 101ST
RESPONDENTS
SUITE 6
REID STREET
WESTDENE
BLOEMFONTEIN

Copy received this ______ day
of March 2019

MOROBANE INCORPORATED
RECEIVED
08-03-2019
BLOEMFONTEIN

12H50

ATTORNEY FOR 94TH & 101ST
RESPONDENTS

AND TO:
L M MOKHELE
ATTORNEY FOR 40TH RESPONDENT
L M MOKHELE ATTORNEYS
15 LANGEBAAN BUILDING
BARNES STREET
WESTDENE
BLOEMFONTEIN
(L M MOKHELE/B-CIV)

Copy received this 07 day
of March 2019

09:08

ATTORNEY FOR 40TH
RESPONDENT

MD-SUP-128

128

"ZDM16"

IN THE HIGH COURT OF SOUTH AFRICA
(FREE STATE DIVISION, BLOEMFONTEIN)

Case no:

In the matter between

THE MEMBER OF THE EXECUTIVE COUNCIL OF THE DEPARTMENT OF CO-OPERATIVE GOVERNANCE, HUMAN SETTLEMENTS AND TRADITIONAL AFFAIRS, FREE STATE PROVINCE — Applicant

and

SCENIC ROUTE TRADING 802 CC — First Respondent

And the 105 further respondents listed in annexure 1 to the notice of motion

---

FOUNDING AFFIDAVIT

I, the undersigned –

NTHIMOTSE MOKHESI

do hereby make oath and say that –

M

1. I am the Head of the Free State Department of Human Settlements (*'the Department'*). My work address is 7th Floor Lebohang Building, corner Markgraaff and St Andrew Streets, Bloemfontein.

2. The applicant (*'the MEC'*) has, in her capacity as the Department's executive authority, resolved to bring this application. I am authorised to depose to this affidavit in support of the application on the MEC's and the Department's behalf.

3. The facts set out in this affidavit are within my own knowledge and belief, except where stated otherwise or where the context indicates otherwise, and to the best of my knowledge all the facts are correct.

4. I have relied on *inter alia* the following sources for certain of the facts set out in this affidavit:

4.1 the transcript of a disciplinary hearing in respect of certain of the Department's employees or former employees, which commenced in 2013;

4.2 the findings made in respect of that disciplinary hearing, which were issued on the 30th of April 2015;

4.3 an investigation carried out by the Special Investigating Unit (*'the SIU'*) into the irregularities which form the subject matter of this application. A confirmatory affidavit by Herbert Lubita, who is employed by the SIU as a project manager, will be filed with my affidavit. Mr Lubita was the senior SIU official who carried out the SIU's investigation.

M

5. If I were to attach to this affidavit all of the documents referred to above, the affidavit would be inordinately long. I therefore do not do so. The full documents will be available at the hearing of this matter. Should any of the respondents require copies prior to the hearing, they are invited to contact the Department's attorneys, who will arrange to make copies available to them.

6. Given that this is an application by the Department for the review and setting aside of its own decisions, the notice of motion to which this affidavit is attached does not call for production of the record, as provided for by rule 53 of the Uniform Rules.

The nature of this application

7. This application arises from a set of agreements concluded in late 2010 and early 2011 between the Department and a number of building contractors and suppliers of building materials (to whom I refer generally as *'the contractors'* and *'the suppliers'*) and to payments made by the Department to the suppliers. The agreements are listed in the schedule attached as **'NM1'** to this application and annexure 2 to the notice of motion.

8. The agreements relate to the construction of low-cost housing in the Free State Province. The Department received a large conditional funding allocation from the National Treasury to build low-cost housing. The agreements formed part of a fraudulent scheme which was conceived by the Department to disburse very substantial sums of money, mainly to the suppliers, in order to avoid the funds becoming a so-called *'unspent conditional allocation'* and therefore reverting to the National Revenue Fund.

9. The Department (through the MEC) seeks orders declaring the agreements and the decisions to make payments to the suppliers to be unlawful and accordingly void *ab initio*. In addition or in the alternative, it seeks the review and setting aside, in accordance with the requirements of legality or in terms of the provisions of the Promotion of Administrative Justice Act 3 of 2000 (*'PAJA'*) or both, of the Department's decisions to conclude the agreements and make the payments. In consequence, it seeks the review and setting aside of the agreements themselves.

10. There are two major grounds on which the Department seeks this relief. The first is that the agreements were concluded and the payments were made in breach of procurement law. The second is that the agreements and payments formed part of a fraudulent scheme and are tainted by fraud.

11. The Department has instituted several action proceedings in this Court against contractors and suppliers who received payments from the Department or who benefitted from such payments (*'the actions'*). In the actions, the Department seeks *inter alia* to recover what it paid over, or an appropriate portion of what it paid over. The actions are listed in the schedule attached as **'NM2'** to this application and annexure 4 to the notice of motion.

12. The outcome of this review application may have a material bearing on the actions. In this review application, therefore, the Department also seeks an order staying the action proceedings, pending the final determination of this application.

13. This affidavit is structured as follows:

M

13.1 First, I describe the parties.

13.2 Second, I summarise the Department's scheme;

13.3 Third, I set out the factual background.

13.4 Fourth, I briefly set out the regulatory framework.

13.5 Fifth, I summarise the legal grounds for the relief sought.

13.6 Sixth, I explain the timing of this application.

The parties

The applicant

14. The applicant is the Provincial Minister of Human Settlements in the Free State Provincial Government, cited in her official capacity. The Department's head office is at 7th Floor Lebohang Building, corner of St Andrews and Markgraaff Streets, Bloemfontein.

The respondents

15. The respondents are cited in '**NM3**' to this affidavit and listed in annexure 1 to the notice of motion.

16. There are 106 respondents. They are the building contractors and suppliers of building materials to which I have already referred. I confirm that this application and the averments made are confined to the respondents as cited herein and as identified in **NM 1** and **NM 2** respectively.

17. It is likely that a significant number of the respondents no longer exist. They will have been wound-up or deregistered.

18. Because there are so many respondents, and because of the likelihood that many of them no longer exist, and in order to limit unnecessary costs, this application will be served on the respondents without the annexures to this affidavit. In other words, only the notice of motion and founding affidavit will be served on them. Should any of the respondents require copies of the annexures, they are invited to contact the Department's attorneys, who will make copies available to them.

19. I submit that such service, coupled with the Department's tender, constitutes adequate service in the circumstances of this application. I ask the Court to condone the Department's failure to serve copies of the full application on each respondent.

Other government departments with an interest in this application

20. Given the nature of this application, the Department will give notice of the application and a copy of the founding papers to the National Treasury and the Minister of Finance; the national Minister of Human Settlements; the Free State Provincial Treasury and the MEC for Finance of the Free State Province; and the Auditor-General.

M V

21. Although they are not necessary parties to the application, so I am advised, and need therefore not be formally joined, they will no doubt have a keen interest in the proceedings.

The Department's scheme

22. I have said that this application relates to a set of agreements which the Department concluded in late 2010 and early 2011 with contractors and suppliers. I have also said that the agreements formed part of a fraudulent scheme conceived by the Department to pay out funds from its conditional funding allocation in order to avoid the funds becoming an unspent conditional allocation and reverting to the National Revenue Fund.

23. It is convenient to describe the Department's scheme upfront. Its major features were:

23.1 The Department concluded some 125 written building contracts with contractors. Cumulatively in terms of these contracts, contractors were appointed to construct approximately 14 769 low-cost houses in six District Municipalities and towns across the Free State. The total value of the building contracts was varied, and was based on an average of R 72 417-80 per unit/house. The building contracts provided that the contractors were obliged to supply the necessary materials for their construction work. The value of the building contracts thus included the cost of materials.

23.2 The Department also concluded some 112 written tripartite supply agreements with contractors and building material suppliers. A material term

M

of these supply agreements was that the Department would pay suppliers for building materials which the suppliers supplied to contractors. Suppliers' claims for payment were required to be supported by (i) an invoice in respect of materials supplied by the supplier to the contractor; and (ii) a certificate from the contractor confirming receipt of the materials invoiced.

23.3 The Department also agreed to the cession by the contractors to the suppliers of claims which the contractors purported to have against the Department. The cessions were documented in written *'material supply cession agreements'*, signed by the contractors, suppliers and the Department. The cession agreements contained instructions from the contractors to the Department to pay the ceded claims to the suppliers.

23.4 The Department made payments to the suppliers. The total value of the payments made to the 21 suppliers over the period 2009 to 2011 exceeds R500 million. The payments were made from the conditional allocation which the Department received from the National Revenue Fund, via the National Department.

23.5 There was no lawful cause for the payments.

23.6 The tripartite supply agreements between the Department and the suppliers and the contractors did not give rise to a cause for the payments, because the suppliers had not supplied materials to the contractors before being paid. The payment structure in the supply agreements, requiring supply before

M

payment, was not followed. The invoicing and certification requirements in the supply agreements were not complied with.

23.7 Nor did the cessions of claims by the contractors to the suppliers give rise to a cause for the payments. This is because the claims which were purportedly ceded – i.e. claims by the contractors against the Department – had not yet arisen. The contractors had not executed the construction works or portions of the construction works, nor had they provided materials to the Department. The contractors therefore did not have claims for payment against the Department.

23.8 The Department nonetheless paid more than R500 million to various suppliers over the course of 2009 to 2011. It did so purportedly on the strength of the cession agreements – in other words, Department officials used the deeds of cession as the paperwork justifying the instruction to their accounting staff to pay out. Department officials also manipulated the Housing Subsidy System, to make it look as if construction work had been executed and that payments were therefore due, when in truth this was not the case.

24. The reason the Department implemented the scheme was this:

24.1 In late October and November 2010, the Department was severely criticised by the National Department because it had very significantly underspent from its conditional grant allocation.

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24.2 Halfway through the financial year, it had spent only 10% of what it was meant to have spent. The National Department and the National Treasury threatened that the unspent allocation would revert to the National Revenue Fund, to be re-allocated to provinces with better spending records.

24.3 In the face of that threat, the Department proceeded to implement the scheme, disbursing funds to the tune of more than R500 million from its conditional allocation over the 2009 to 2011 with no lawful cause for the payments made.

25. The Department has struggled, despite having made considerable effort, to determine what has been received, and from whom, in exchange for the payments which it made. It does appear that after the payments were made, some materials were delivered by some of the 21 suppliers, and some housing was built by some of the 85 contractors. However, the suppliers and contractors have not reported properly to the Department on what they have done. This has made it extremely difficult for the Department to obtain accurate information about what materials have been delivered by which suppliers, and what housing has been built by which contractors.

26. The Department has, however, obtained reports which indicate how much more it will cost to procure that the housing which the contractors were contracted to build – the 14 769 units to which I referred above – is built. It will cost the Department an estimated further approximately over R 500 million. The calculation is not straightforward, but the Department's best estimate is that it has lost approximately R 400 866 000-00 million.

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27. I submit that the Department's scheme was a fraud on the national government, specifically on the fiscus. It was also a fraud on the public – on all who expect state funds to be spent properly, including on improving the standard of living of the poor; on those in the Free State and in other provinces with an expectation of receiving state-funded housing; and on all taxpayers.

28. I have described above the fraudulent aspects of the Department's scheme. It is important to point out that the contracts were also unlawful because the Department did not follow any lawful procurement process before concluding them. This is in itself a ground on which the contracts should be declared void.

29. I now deal more fully with the factual background.

The factual background

The* Breaking New Ground *low-cost housing project

30. In September 2004, Cabinet approved the *'Comprehensive Plan for the Development of Sustainable Human Settlements'*, commonly referred to as *'Breaking New Ground'*, or *'BNG'*. BNG is a plan aimed at improving the quality of housing, through the state-subsidised housing programme. Amongst the ways it tries to achieve that aim are easing delivery constraints, increasing building capacity, and rooting out corruption and maladministration.

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31. Funds are allocated each year by the National Treasury to each province for the purposes of BNG. The allocation is provided for in the annual Division of Revenue Act (*'DORA'*).

32. The allocation is a specific-purpose and conditional allocation – in other words, a province receiving funds is not unconstrained in how it spends those funds. DORA imposes conditions on such spending. The province may only use the funds for the purpose for which they were allocated. Furthermore, there are restrictions which apply to paying third parties (for example contractors) from the funds:

32.1 The province must have entered into a payment schedule with the third party.

32.2 The payment must be for services rendered by or goods received from the third party – and those services or goods must have been properly procured, in accordance with supply chain management requirements.

32.3 Advance payments to third parties, i.e. where the services have not yet been rendered or the goods not yet delivered, are subject to specific requirements, including approval by the National Treasury.

33. If a conditional allocation has not been spent by the end of the financial year, it reverts to and must be repaid to the National Revenue Fund, unless the National Treasury is satisfied that the unspent allocation has been committed to identifiable projects (section 20 of DORA). Typically, where a province has failed to spend its conditional allocation, (e.g. for a housing or education project), and the funds revert to the National Revenue Fund, the funds will in future years be allocated to other provinces

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which have a good track record in spending on the relevant housing or education project.

34. The agreements at issue in this application formed part of a fraudulent scheme contrived by the Department and the respondents to circumvent the provisions of DORA, and avoid the Department's unspent conditional housing allocation reverting to the National Revenue Fund.

The 2010/2011 allocation and the Department's failure to spend it

35. In terms of the Division of Revenue Act 1 of 2010 (*'DORA 2010'*), the National Treasury allocated the Free State Province R1,300,691,000 (R1.3 billion) as a *'Human Settlements Development Grant'* for the 2010/2011 financial year. The purpose was to provide *'funding for the creation of sustainable human settlements'* – that is, for low-cost housing. A further amount of R119,309,000 was rolled-over from the previous financial year, bringing the total allocation to R1.42 billion. I shall refer to it as the BNG (*'Breaking New Ground'*) allocation.

36. Municipalities in the Free State identified their individual low-cost housing needs and applied to the Department for funding. The Department performed a needs analysis in respect of the various municipalities. It then prepared a housing allocation list, setting out the number of low-cost houses to be constructed in each municipality, funded by the BNG. Over the course of the 2010/2011 and 2011/2012 financial years, 21,050 low-cost houses were to be built. I attach, marked **'NM 4'**, a schedule which sets out the housing allocation list, municipality by municipality, for the 2010/2011 financial year.

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37. The 2010/2011 financial year ended on 31 March 2011. By late 2010, it was very clear that the Department would not be able to spend the BNG allocation – or even a meaningful portion of the allocation – by the end of the financial year.

38. Various factors contributed to this. Amongst other things, the Premier of the Free State had announced after the April 2009 elections that the Department would build *'bigger and better'* houses, of $50m^2$ instead of $40m^2$. New specifications had to be drawn up and a new policy formulated to give effect to this political promise, and this caused long delays.

39. In addition, a tender which the Department had put out in early 2010 for the construction of low-cost houses lapsed and was cancelled, as I explain more fully below.

40. The national Department of Human Settlements monitored the provinces' spending of their DORA allocations. In October 2010 – six months into the financial year – the monitoring exercise indicated that four provinces, including the Free State, had not met their monthly spending targets in respect of the allocations, nor their monthly targets for the delivery of the low-cost houses.

41. Tokyo Sexwale, who was then the national Minister of Human Settlements, raised concerns about this with the various provincial MECs. He issued a notice to the Department, indicating that it had spent less than 10% of what it was meant to have spent by the start of the third quarter of the financial year. The Free State and the other under-performing provinces were called on to submit *'recovery plans'*, showing how they intended improving expenditure and delivery.

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The Department's **'expenditure recovery plan'**

42. The MEC and the Department's senior officials met to develop a plan to improve expenditure. The expenditure plan which the Department developed, and which I describe in more detail below, projects a very high rate of expenditure over the period November 2010 to the end of March 2011.

43. By the time the Department developed that plan (October 2010), it had already started making unlawful payments from its fiscal allocation to some contractors and suppliers. The high rate of expenditure projected in the plan for the period November 2010 to March 2011 was premised on and depended on such unlawful payments continuing. Furthermore, by the time the Department developed the plan, it knew – because it had been told by the National Department – that such payments were unlawful and must stop.

44. As to the unlawfulness of the plan, and the Department's knowledge that the plan was unlawful:

44.1 The payments were unlawful because no contracts were in place with the suppliers, no proper procurement process had been followed, and neither the National Department nor the National Treasury had authorised – or indeed even knew about – the payments. Nor had the contractors and suppliers done any work or supplied any materials.

44.2 Neville Chainee, who was the Chief of Operations of the National Department, had learned that the Department was making unlawful payments. Chainee discussed this with officials from the National Department and the National Treasury. The officials agreed that the Department's payments were unlawful. The officials also agreed that, had the Department approached the National Department or the National Treasury for permission to make such advance payments, permission would have been refused.

44.3 The National Department's and the National Treasury's main objection to the payments was that they were advance payments: monies were being transferred to contractors or suppliers without any work having been done or materials having been received.

44.4 One of the basic features of the state's policy on state-funded housing schemes (and this is reflected in various regulatory instruments) is that payment may only be made against value actually received, and only on the achievement of set milestones. In other words, the state as employer will only pay a contractor for a construction job once the job has actually been completed. Interim progress payments are permissible, but only for predetermined, defined sections of the job – and then only once those sections of the job have actually been completed. The Department's payments to suppliers and contractors breached these basic requirements, because the suppliers had not supplied any materials and the contractors had not done any work.

44.5 The issue was raised at a Technical Human Settlements MinMEC meeting held on 29 October 2010. The meeting was attended by, amongst others,

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Chainee on behalf of the National Department and MK Maxatshwa on behalf of the Department. (Maxatshwa was at the time the Chief Director: Local Government Administration within the Department.) Chainee made it clear to Maxatshwa that the payments were unlawful and impermissible.

44.6 I have relied, for the account above, on the evidence given by Chainee at the disciplinary hearing on 20 June 2013. Chainee's testimony is transcribed at pages 1 to 82 of the 20 June 2013 transcription.

45. Returning to the content of the Department's expenditure plan: What the Department's officials developed was known as the *'expenditure recovery plan'*, or *'ERP'*. (*'Recovery'* in this context does not mean that the plan involved the Department claiming money back; the plan was to enable the Department to remedy, or recover from, its under-expenditure or slow expenditure – in other words, to spend more money, faster.)

46. I attach, marked **'NM 5'**, a copy of the ERP.

47. The ERP is in the form of a slide presentation, headed *'Human Settlements Expenditure Recovery Plan for 2010/2011'*. It contains a *'10 Point Plan'*, which includes steps such as increasing internal project management capacity (point 2); strengthening technical capacity (point 3); and establishing project offices (point 7).

48. The ERP also sets out cash flow projections (the last slide). As I have already indicated, the ERP's cash flow projections project a massive catch-up of spending. They project the Department spending over R1 billion (of a total grant for the

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2010/2011 financial year of R1.3 billion) over five months (including December and January, when builders traditionally take a month's holiday). These projections were made in circumstances where the Department had failed to spend even 10% of what it was meant to have spent in the first half of the 2010/2011 financial year.

49. The ERP does not indicate how this extraordinary projected rate of expenditure would be achieved.

50. I referred earlier to the Technical Human Settlements MinMEC meeting held on 29 October 2010, at which Chainee advised Maxatshwa that the Department's advance payments were unlawful. A follow-up Technical Human Settlements MinMEC meeting was held on 18 November 2010.

51. I attach, marked '**NM 6**', a copy of the minutes of the Technical MinMEC meeting of 18 November 2010.

52. Again, Maxatshwa attended on behalf of the Department. He presented the Department's expenditure recovery plan (**NM 5**). He also raised the proposed use of *'tripartite agreements'* in the housing project.

Technical MinMEC rejects the expenditure recover plan; the Department implements it nonetheless

53. The Technical MinMEC meeting rejected the Department's expenditure recovery plan. It warned the Department not to implement it.

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54. There were two major problems. First, the plan did not demonstrate the Department's ability to spend its allocation in the few months remaining until the end of the financial year, 30 March 2011. Second, the proposed tripartite agreements were rejected *'since suppliers would have to supply materials in bulk without the necessary support to ensure quality and proper procurement proceedings. Also there are lots of risks with this arrangement'* (item 3.2.3 of the minutes, **NM 6**).

55. The chairperson of the meeting also informed the meeting that *'funds will be shifted from the Province as per the decision taken with the Eastern Cape'* (item 3.2.4 of the minutes, **NM 6**).

56. A Human Settlements MinMEC meeting was held the following day, 19 November 2010. Again, Maxatshwa attended on behalf of the Department.

57. I attach, marked **'NM 7'**, a copy of the minutes of the MinMEC meeting of 19 November 2010.

58. The MinMEC meeting confirmed the approach adopted at the Technical MinMEC meeting, namely that funds would be shifted from non-performing provinces. I refer to item 3.2 of the minutes, **NM 7**.

59. Maxatshwa returned to Bloemfontein and advised the then Head of Department, Mpho Mokoena (*'Mokoena'*), that the Department had been warned not to implement the expenditure recovery plan. However, Mokoena instructed Maxatshwa to proceed with the plan. I base this allegation on the findings of the disciplinary hearing (the reasons for the finding, paragraph 12, page 12).

60. Mokoena's instruction was formalised via an internal memorandum. The memorandum was prepared by Muso Tsoametsi, who was then the Deputy Director General of the Department. Mokoena signed the memorandum, approving the recommendations it contained, on 25 November 2010.

61. I attach, marked **'NM 8'**, a copy of the internal memorandum.

62. Paragraph 1 (*'Background'*) records that *'[a]s part of Housing Implementation Turn Around, the Department agreed to pilot an intervention strategy aimed at supporting Housing Contractors and fast tracking housing delivery ...'*.

63. The memorandum on the one hand indicates that the Department would only pay material suppliers for material actually supplied to a contractor and invoiced, with the invoices to be backed up by a certificate issued by the contractor, confirming receipt of the material. I refer for example to paragraphs 2.3.5 and 3.3 of the memorandum.

64. At the same time, however, the memorandum contemplates advance payments to material suppliers, with advance payments to be regulated via a specific agreement. For example, one of the features apparently *'informing'* the Department's turn-around strategy is that *'[t]he Department will where necessary enter into agreement with Material Suppliers and provide them with an advance payment'* (paragraph 1, fifth bullet point). Paragraph 3.6 of the memorandum states that *'[t]he Department may provide an advance payment to the material supplier, and in such event a separate agreement shall be entered into by the Department and the service provider'*.

65. The Department's decisions were in clear breach of the advice given to it by the National Department, via Chainee, and the Technical MinMEC meetings. The Department had been told that its expenditure recovery plan was not acceptable, and that it should not implement it. It had also been told that paying suppliers, without the suppliers having supplied materials, was unlawful.

66. As I set out in more detail below, the Department proceeded to make payments to suppliers without the suppliers having supplied material – i.e. it made payments in advance. No written agreements were concluded governing those payments. The Department did not follow any proper procurement process to identify the suppliers to which it made payments. The total value of the payments made is nearly R1 billion.

67. On 12 January 2011, the National Department advised the Department that R263 million of its conditional allocation was to be stopped and would be re-allocated to other provinces. The transfers to the Department of conditional allocation funds which would have been made in February and March 2011 would not be made.

68. I attach, marked **'NM 9'**, a copy of the National Department's letter.

69. On 18 January 2011, the National Department issued a media statement regarding the shifting of funding from under-performing provinces (the Free State and KwaZulu-Natal) to other provinces. I attach, marked **'NM 10'**, a copy of that media statement.

70. The Department responded by issuing its own media statement on 20 January 2011, purporting to *'set the record straight'*. It stated, amongst other things, that the

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Department would spend its entire conditional allocation by the end of the financial year. It stated that –

> *'As of to date, 20 January 2011, the department has spent a total of 78% of the conditional grant funding. By the end of January, expenditure should be around 85%.'*

71. I attach, marked '**NM 11**', a copy of the Department's media statement.

72. By the time these statements were issued, the Department had already transferred several hundred million rand from its conditional allocation to suppliers. It continued to make unlawful transfers in January, February and March 2011. The transfers were made without the suppliers having supplied material, without written agreements in respect of or regulating the transfers, and without any proper procurement process having been followed.

73. The Department made the transfers for the purpose of avoiding having its conditional allocation stopped and transferred to better-performing provinces. It made the transfers so that it looked as if the conditional allocation had been spent. I submit that this was a fraud on the National Treasury and on the national government more broadly, as well as on taxpayers and the public generally.

74. I repeat that the unlawful transfers amount to +- R 631 million in total.

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The lapse and cancellation of the BNG housing tender

75. I indicated earlier that a tender which the Department had put out for the construction of low-cost houses lapsed and was cancelled. I now give more details in that regard.

75.1 In early 2010 the Department, by means of a public tender (*'the tender'*), invited bids for the construction of houses to be funded by the BNG allocation. The tender closed on 16 April 2010.

75.2 The Department's Supply Chain Management Directorate and the Bid Evaluation Committee (*'BEC'*) prepared an evaluation report to the Bid Adjudication Committee (*'BAC'*) in respect of the tender. I attach a copy, marked **'NM 12'**.

75.3 It is evident from the evaluation report that 361 bids were received; 105 were disqualified for basic bid compliance reasons (e.g. no valid tax clearance certificate was submitted); 147 bids were disqualified because they did not meet the minimum functionality threshold; and 28 bids from so-called *'established'* contractors, and 81 bids from so-called *'emerging'* contractors, qualified to be evaluated on price. The BEC recommended that the 109 qualifying bids be adjudicated on price.

75.4 The BAC met to consider the tender on 28 July 2010. At that meeting, the BAC members acknowledged that the tender validity period had lapsed. The resolution passed by the BAC was to cancel the tender, and to establish a

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database of service providers (including but not limited to bidders for the lapsed tender) as a *'source of service providers'*.

75.5 I attach, marked **'NM 13'**, a copy of the minutes of the BAC meeting. (I note that the BAC meeting minutes appear to have been signed in October 2010, although the meeting took place in July 2010. I do not know why this is so.) Item 7.1 refers to the tender and then reads –

> *'The chairperson indicated to the committee that the tender has been evaluated but due to the fact that the validity of the tender has expired, and they cannot adjudicate they have to cancel the tender. However in order to spend the money appropriately they have to use the suppliers on different databases.*
>
> ***Resolution:*** *Cancellation of tender is recommended due to the expiry thereof. The committee recommends that different databases be consolidated and used as a source of service providers i.e. Departmental databases, Provincial centralised database, Quadrem database as well as the list of all suppliers who tendered for this tender.'*

75.6 The BAC's decision was entered onto a 'Departmental Bid Adjudication Committee Presentation Form'. I attach, marked **'NM 14'**, a copy of the form.

75.7 The decision was approved on 30 July 2010 by the Department's accounting officer, i.e. the then Head of Department, Mokoena. This appears from his signature on **'NM14'**.

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76. The Department thus decided to award contracts to contractors on various databases, as well as to the contractors who had bid for the tender – notwithstanding that 105 of the bidders were disqualified for basic bid compliance reasons, and that a further 147 were disqualified because they did not meet the minimum functionality threshold.

Conclusion of the building contracts

77. Between 12 February 2010 and 18 November 2011, the Department concluded more than one hundred building contracts for the development of BNG houses. Various addenda to these building contracts were concluded during 2011 and 2012. **NM1** to this affidavit lists the building contracts and addenda.

78. Most of the building contracts were concluded after cancellation of the tender in July 2010, but some were concluded earlier. None of them was concluded pursuant to any proper procurement process; the Department simply gave the contracts to contractors on its databases or who had submitted bids for the (lapsed and cancelled) tender.

79. I attach, marked '**NM 15**', a copy of one of the building contracts concluded by the Department. It is typical of the more than one hundred building contracts which the Department concluded as part of the scheme.

80. It is a contract between the Department and Inzuzo Trading 516 CC (*'Inzuzo Trading'*) for the development of 150 housing units in Bulfontein, Tswelopele Local Municipality. I do not set out all its terms. I draw attention to the following provisions:

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80.1 The contractor's obligations included *'before starting work on site, provid[ing] a Project Schedule of the Project ... which Project Schedule must be duly signed by both Parties and which shall form Appendix 3 to this Agreement'* (clause 4.1(b)).

80.2 The contractor's obligations also included providing *'all of the necessary materials, labour, plant and equipment to erect the Project'* (clause 4.1(d)).

80.3 The contractor's obligations also included keeping information relating to the building project up-to-date, and allowing the Department access to such information (clause 4.1(k)); and providing the Department with monthly written progress reports on the status of the project, expenditure to date, and any other information reasonably required by the Department (clause 4.1(m)).

80.4 The contractor was *'entitled to payment of the amounts set out in Appendix 1 per milestone and date as set out in Appendix 1 read with Appendix 3'*, (subject to particular provisions in respect of, for example, payment of conveyancing fees, municipal fees and the like) (clause 14.1). The contractor was required to deliver to the Department *'a claim for payment of all amounts it considers to be due, which shall be verified by the Department prior to processing and payment thereof'* (clause 14.2). I point out that *'Payment'* is defined as payment within thirty days *'of the completion of the work in terms of the milestones of the Project ... to the satisfaction of the Department'* (clause 1.1).

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80.5 The contract also contains provisions regulating determination of the final value of the project, the preparation of a draft final account, and the issuing of a final payment certificate (clauses 14.4 to 14.6).

80.6 The *'per unit'* price payable to the contractor is R72,417.80. The total contract price is therefore R10,862,670 (R72,417.80 x 150 units). This is apparent from Appendix 1.

81. Appendix 3 is headed *'Project schedule'*, and contains the following note: *'To be provided by the Contractor and duly signed by both Parties'*. *'Project Schedule'* is defined in clause 1.1 as *'those details directed at expressing the progress and the completion of the Project within the agreed time periods, with specific milestone to be achieved by the Contractor during the project period and the financial projections attached thereto, which plan is set out in Appendix 3'*.

82. In the attached sample contract, **NM 15**, Appendix 3 is blank – no details have been completed. This is typical. In respect of many of the building contracts, no project schedule was prepared or agreed.

83. The basic structure of the agreement is nonetheless clear. The Department would make payments to the contractor against completion by the contractor of particular stages, or *'milestones'*, of the works, with the works claimed for to be verified by the Department.

84. The basic structure of the agreement accords with construction industry practice.

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85. The basic structure of the agreement also accords with the Housing Subsidy System (*'HSS'*). In this regard:

85.1 Section 6 of the Housing Act 107 of 1997 requires that the Director-General: Housing establish a national housing data bank and a national housing information system. The HSS was established in terms of section 6 of the Housing Act.

85.2 The HSS records information about government-funded housing projects, including information about construction and payment. Organs of state involved in government-funded housing projects, including provincial housing departments and some municipalities, are obliged to feed information from their projects into the HSS, and to use the HSS as a project management tool for their housing programmes.

85.3 The HSS records progress in constructing houses in particular projects, including the achievement of the predefined *'milestones'* against which contractors are entitled to receive a portion of the contract price. It has the effect of regulating the making of payments to contractors. One of the practical requirements which must be met before funds can be released for payment to contractors is that the relevant officials have fed into the HSS that the contractors have met the relevant milestones in respect of the relevant housing units.

85.4 The construction-related predefined milestones for the housing projects at issue in these proceedings were (i) the foundations; (ii) the *'wall plate'* and

(iii) completion. These can be seen in the construction agreement attached as **'NM 15'**, on the second page of Appendix 1.

85.5 I emphasise that achieving a milestone involves construction work. For example the *'foundations'* milestone involves digging the foundations, throwing the appropriate slab, installing the necessary piping for services such as sewage and water, and the like. The materials relating to a particular milestone must be used by being incorporated into the construction work, before the milestone is met. The milestone is not met if the materials are standing loose on site. The principle behind this is expressed as the requirement that government achieve *'value for money'* before it makes a payment.

85.6 A contractor's work must be checked before the Department (or other organ of state) feeds into the HSS the information that a particular milestone has been reached, and that payment can therefore be made. An engineer, together with an official from the Department and often a representative of the National Home Builders Registration Council (*'NHBRC'*), will visit the project site. The engineer will count the number of individual housing sites involved, check the workmanship and – if appropriate – verify that the foundations (or whatever milestone is at issue) have been constructed to the required standard. The engineer will then issue an engineer's report – a so-called Technical Analysis System report, or TAS.

85.7 A contractor on a government-funded housing project is thus only entitled to an interim payment against his or her having achieved a properly-verified milestone.

86. The basic structure of the agreement also accords with the National Treasury's requirements in respect of payments to third parties from conditional DORA allocations – i.e. that such payments must be for services actually rendered or goods actually received. Advance payments are only permitted if particular requirements, including securing approval from the National Treasury, have been met.

Conclusion of the material supply agreements

87. Between October 2010 and August 2011, the Department concluded approximately 112 agreements termed *'material supply agreements'*. **NM1** to this affidavit lists the material supply agreements.

88. The material supply agreements are tripartite agreements. The three parties are (i) the Department, (ii) a supplier of building materials, and (iii) a building contractor – one of the contractors with whom the Department has concluded a building contract.

89. I attach, marked '**NM 16**', a copy of one of the material supply agreements concluded by the Department. It is typical of the approximately 112 material supply agreements which the Department concluded as part of the scheme.

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90. It is a contract between the Department, Inzuzo Trading (as the contractor) and Scenic Route Trading 802 CC (*'Scenic Route'*) (as the material supplier). I do not set out all its terms. I draw attention to the following provisions:

90.1 The preamble records that –

90.1.1 the Department has concluded an agreement with Inzuzo Trading for the construction of 150 housing units in Bultfontein, in the Tswelopele Local Municipality (that is the building contract between the Department and Inzuzo Trading referred to above and attached as **NM 15**);

90.1.2 the Department *'has undertaken to provide the contractor with the necessary support insofar as it relates to material supply and professional management'* (there is no such undertaking by or obligation on the Department in the building contract);

90.1.3 the Department *'is desirous to appoint the building material supplier to provide the necessary building material to the contractor to meet the obligations contemplated in the* [building contract]*'* (as I have indicated, there are no such obligations on the Department in the building contract – to the contrary, in terms of the building contract, it is the contractor's obligation to provide all materials).

90.2 The agreement obliges the contractor to order its building material from the material supplier (clause 2.1.3).

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90.3 There are no fixed prices for materials. The contractor is obliged to *'ensure that the building material supplier provides the material at best prices'*, and if the prices are not *'the best in the market'*, then the contractor must approach the Department *'to intervene and negotiate for a reasonable price'* (clauses 2.1.4 and 2.1.5). The material supplier is obliged to supply material *'at best price'* (clause 2.2.2). There is a provision which constitutes nothing more than a recordal of the Department's hope: *'The Department expects the contractor and the Building Material Supplier to agree on a price list that will form part of the agreement as Annexure'* (clause 2.3.7). (While clause 2.4.1 records that *'The fees structure for the duration of this agreement is appended to this agreement as an Annexure'*, no such annexure is appended. This is typical of the material supply agreements).

90.4 The payment structure contemplates the material supplier supplying a quantity of material to the contractor; the material supplier invoicing the Department for the material; and the contractor certifying the material supplier's invoice, so as to verify that it received the material reflected on the invoice (clause 2.3.5). The Department is required to pay the material supplier within 21 days of receipt of certified invoices (clause 2.3.6). (Similar provisions are contained in clauses 2.4.2 and 2.4.3.)

91. I make the following comments on the material supply agreement.

92. First: The material supply agreement varies, or purports to vary, the building contract in various important ways (I do not comment here on the contractual validity of the variations):

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92.1 The building contract requires the contractor to source material, and therefore to identify and contract with a material supplier. However, the material supply agreement obliges the contractor to accept material from the material supplier identified by the Department.

92.2 The building contract requires the contractor to fund the cost of material upfront, and then to recover the expenditure via interim invoices. However, under the material supply agreement, the contractor has no obligation to fund the cost of material. The Department pays for material.

92.3 Because the Department, in terms of the material supply agreement, assumes the obligation to pay for material, the *'per unit'* price payable to the contractor should be reduced. This consequence is not reflected or recorded anywhere.

92.4 The timing of payments differs. Under the building contract, the Department is required to pay the contractor's interim invoices, which are to be submitted when the contractor achieves certain construction milestones. Under the material supply agreement, the Department is required to pay for materials as and when the supplier supplies them (subject to the contractor certifying the supplier's invoices, and allowing the Department 21 days to make payment).

93. Second: The Department did not follow any proper procurement process before concluding the material supply agreements. It simply concluded the agreements. It is unclear how it identified the material suppliers with whom it contracted.

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94. Third: As I highlighted in the summary of the provisions of the agreement, the material supply agreement does not set a price for the materials. The Department bound itself to buy materials from suppliers without knowing what it would pay for them. The obligation on suppliers to supply materials at *'best price'* is vague – so vague that the agreement may well be unenforceable on this ground alone. But the most relevant aspect for present purposes is the Department's conduct in concluding agreements on such hopelessly uncommercial terms.

95. Fourth: The structure put in place by the material supply agreement is most unusual in the construction industry, and is at odds with the requirements of the HSS. In this regard:

95.1 The structure is essentially that the Department as employer (i) itself procures the supply of basic construction materials from a supplier whom it has identified (rather than this being the job of the contractor); and (ii) itself pays for the materials (rather than requiring the contractor to do so). In this structure, the employer assumes responsibility for significant matters which are ordinarily the responsibility of contractors.

95.2 Moreover, there is a departure from the requirement that materials actually be incorporated into the houses being built, and to the satisfaction of the employer, before the employer is required to pay for the materials.

96. Fifth: I have highlighted above certain objectionable features of the material supply agreement. There was no proper procurement process; the agreement is commercially unsound; and the agreement departs in significant respects from basic and standard

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features of construction agreements. There is one feature of the agreement which may seem to save it from complete condemnation, namely the requirement that contractors certify material suppliers' invoices before the Department pays the invoices. This requirement, if adhered to, would go some way towards ensuring that the Department only paid for materials actually supplied. However, as I explain later, this requirement was not adhered to. The Department paid substantial amounts of money often with no invoice at all. Where there was a document purporting to be an invoice, it was not certified and was often patently false.

97. Finally, the material supply agreement largely gives effect to the recommendations adopted by the Department in the memorandum of 25 November 2010, referred to in paragraphs 60 to 64 above. This is readily apparent if one compares the memorandum (**NM 8**) and the material supply agreement (**NM 16**). What the terms of the material supply agreement do not reflect is the Department's intention, apparent from paragraphs 1, 3.6 and 4.4 of the memorandum, to make advance payments to material suppliers.

Conclusion of the material supply cession agreements

98. The next piece of the puzzle is the conclusion of approximately 167 purported deeds of cession, termed *'material supply cession agreements'*, by the contractors and material suppliers, and agreed to by the Department.

99. Between October 2010 and August 2011, approximately 167 such cession agreements were concluded. **NM1** to this affidavit lists them.

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100. The cession agreements purport –

100.1 to give effect to a cession by the contractor (as cedent) of its claim against the Department (as debtor) to the material supplier (as cessionary); and

100.2 to instruct the Department to pay the claim to the material supplier on demand.

101. I attach, marked **'NM 17'**, a copy of one of the material supply cession agreements. Again, it is reasonably typical of the approximately 167 cession agreements which were concluded as part of the scheme.

102. It is a deed of cession between Inzuzo Trading (i.e. the contractor) as cedent and Scenic Route (i.e. the material supplier) as cessionary. It is also signed on behalf of the Department, which acknowledges and agrees to abide by its terms. It was signed on 25 January 2011 by all three parties.

103. Again, I do not set out all its terms. I draw attention to the following provisions:

103.1 The deed of cession records that Inzuzo Trading has a claim against the Department for the maximum sum of R10,862,670 arising out of an agreement. The recordal refers to 150 housing units in the Bultfontein area. The claim referred to evidently arises out of the building contract, **NM 15**.

103.2 The deed of cession also records that Inzuzo Trading *'has agreed to cede his right to payment from [the Department] in respect of the provision of*

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building material in terms of the agreement between [the Department], [Inzuzo Trading] and [Scenic Route]'.

103.3 The executory part of the deed of cession (in clause 1) reads in part as follows: '... *the Cedent* [i.e. Inzuzo Trading] *hereby cedes, transfers and makes over to the Cessionary* [i.e. Scenic Route] *the Cedent's right, title and interest in and to the amount of R1,453,600.00 (being in respect of material supply for FOUNDATIONS concrete mix for 150 units) payable by the principal* [i.e. the Department] *to the Cedent in terms of the Claim referred to above'.*

103.4 The deed of cession contains an instruction to the Department to pay the claim to Scenic Route as cessionary *'should the Cessionary so demand'* (clause 5) and provides Scenic Route's bank details (clause 6).

104. I make the following comments on the material supply cession agreement.

105. First: It is inconsistent with the payment structure put in place by the material supply agreement. In this regard:

105.1 The material supply agreement provided that the supplier would supply materials to the contractor and invoice the Department for those materials; the contractor would certify the supplier's invoice, i.e. it would certify that it had indeed received the materials billed for; and the Department would pay the supplier for the materials after certification of the invoice by the

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contractor. In other words, the supplier's supply of materials to the contractor would give rise to a claim in the hands of the supplier against the Department.

105.2 However, the material supply cession agreement reflects a claim in the hands of the contractor against the Department arising from the supply of materials – which claim is then ceded to the material supplier.

106. I also attach, marked **'NM 18'**, a copy of another material supply cession agreement. This time, it is between Besakha Trading CC (*'Besakha'*), a contractor, and Rich Rewards / Build It (Pty) Ltd (*'Rich Rewards'*), a material supplier – and once again signed on behalf of the Department.

107. It is for the most part the same as **'NM17'**. However, the right purportedly ceded is different:

107.1 In **'NM 17'**, the right ceded is supposedly the contractor's right to payment from the Department *'in respect of the provision of building material'*.

107.2 In **'NM 18'**, however, the right ceded is supposedly the contractor's *'right to payment from the [Department] in respect of the provision of bridging finance and/or securities and the supply of financial services'*. This is frankly bizarre. The contractors did not provide *'bridging finance'* or *'securities'* or *'financial services'* to the Department, and had no claim against the Department for payment for such services or products.

108. Many of the material supply cession agreements follow the **'NM 18'** precedent.

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How the Department used the material supply cession agreements to make unlawful payments

109. The Department then used the material supply cession agreements to make payments to material suppliers.

110. The material supply cession agreements formed part of the paperwork submitted to the Department's accounting staff, together with an instruction to make payment. As I explain below, the Department's instructions to make payment were accompanied by different documents from one case to another. In some cases, the Department's scheme was completely crude, and in other cases somewhat more sophisticated, but the starting point in almost every case was the material supply cession agreement. The material supply cession agreements made it look as if there was indeed an amount due and payable by the Department to the material supplier.

111. In the Department's standard payment advice form, which Department officials submitted to the accounting staff as an instruction to make payment, Department officials would indicate that the payment was being made as a *'sundry'* item (as opposed to, for example, on the strength of an invoice submitted to the Department). The relevant cession agreement, indicating the amount supposedly ceded and the instruction issued by cessionary to the Department to make payment, would be attached to the payment advice form.

112. In many cases, the Department paid out on nothing more than the documentation described above. It appears that this was particularly the case in respect of payments which the Department made during the period roughly from November 2010 to

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February 2011, and particularly during December 2010 and January 2011. These are the cases where the Department's scheme was very simple – indeed, crude.

113. In other cases, the documentation included a document purporting to be a tax invoice or pro forma invoice issued by the material supplier to the contractor. Such documents supposedly reflected that the material supplier had delivered material to the contractor. However, the contractor did not certify such 'invoices' to verify that the material had in fact been received.

114. Moreover, many of such invoices are obviously false. They reflect for example that material for roofs and walls has been delivered, but at such an early stage of the project – so soon after conclusion of the construction agreement – that the contractor could have had no use yet for roofing and wall material (and had not claimed or purported to claim for foundation-related work or materials).

115. The reason that participants in this scheme would decide to reflect the supply of roofing and wall material rather than, say, bricks and cement is that that roofing and wall material is much more expensive. This allowed the Department to pay out more money, more quickly.

116. I illustrate this with the example of two 'tax invoices' issued by Rich Rewards (the material supplier) to Besakha (the contractor).

116.1 The Department had awarded Besakha a contract, signed on 12 October 2010, for the construction of 150 houses in Heilbron, in the Ngwathe Local Municipality.

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116.2 On 29 November 2010, Rich Rewards issued a 'tax invoice' to Besakha in respect of quantities of twenty different items with VAT-exclusive unit prices ranging between approximately R1 and R300. The total value of the invoice is just more than R780, 401-25 including VAT. I attach a copy, marked **'NM 19'**.

116.3 On 1 December 2010, Rich Rewards issued another 'tax invoice' to Besakha, this time in respect of 100 units of wallplate material and 150 units of top structure material. The unit price for wallplate material is just more than R13,691-25 excluding VAT. The unit price for top structure material is just less than R15,897-21 excluding VAT. The total value of the invoice is just less than R4,279, 225-41 including VAT. I attach a copy, marked **'NM 20'**.

117. As I have stated above, in many cases the Department paid out without documentation even purporting to lend credibility to the payment. But where there was documentation purporting to lend some credibility to the payment, as in the Rich Rewards / Besakha example, it was very often false documentation, put together to justify the Department paying out significant sums quickly.

118. Furthermore, it is clear from the disciplinary proceedings that the Department manipulated the HSS system so that the Department could make payments without the contractors having met the prescribed milestones.

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The extent of the payments

119. The scheme described above allowed the Department to pay material suppliers very significant sums of money.

120. I give two examples to illustrate this.

121. The first is the example of Rich Rewards, mentioned earlier. Rich Rewards was a material supplier identified by the Department, via the tripartite material supply agreement, as the supplier to several contractors. In November and December 2010, several contractors purported to cede to Rich Rewards claims for payment against the Department.

122. In all of the deeds of cession in respect of Rich Rewards, the right ceded is described as the contractor's *'right to payment from the [*Department*] in respect of the provision of bridging finance and/or securities and the supply of financial services'*. I have already pointed out that the contractors had no claim against the Department for the provision of such products or services.

123. In the very few cases where 'tax invoices' or pro forma invoices were submitted, supposedly reflecting the delivery of materials, there was no certification by the contractor of the delivery. In any event, as I have explained, payment is due under the construction agreements, not on delivery of materials to a site or to a contractor, but when the contractor has physically incorporated those materials into the housing unit to the satisfaction of the Department.

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124. The table below summarises relevant information regarding the cessions to Rich Rewards, taken from the SIU's files of documents.

Cessions to Rich Rewards / Build It (Pty) Ltd					
	Contractor and date of construction agreement	**Date of cession**	**Amount of the ceded claim**	**The right ceded**	**Supporting documents?**
1.	Metsimaholo Emerging Contractors 28.09.2010	03.12.2010	R5,179,777	*'Right to payment from the [Dept] in respect of the provision of bridging finance and/or securities and the supply of financial services'*	No
2.	Ndabambi Roots & Construction Projects 29.09.2010	24.11.2010	R13,096,340	*'Right to payment from the [Dept] in respect of the provision of bridging finance and/or securities and the supply of financial services'*	A 'tax invoice' issued to the contractor dated 29.11.2010 for R1,459,980 including VAT. No indication that goods were received or checked
		24.11.2010	R32,740	*'Right to payment from the [Dept] in respect of the provision of bridging finance and/or securities and the supply of financial services'*	
3.	Besakha Trading 12.10.2010	01.12.2010	R5,059,627	*'Right to payment from the [Dept] in respect of the provision of bridging finance and/or securities and the supply of financial services'*	Two 'tax invoices' issued to the contractor, one dated 29.11.2010 for R780,401.25 (incl VAT), the other dated 01.12.2010 for R4,279,225.41. No indication that goods were received or checked *[The invoices were referred to in paragraph 116 and are attached*

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					as NM[] and NM[]]
4.	Hlengiwe Business Solutions 28.09.2010	23.11.2010	R33,531	*'Right to payment from the [Dept] in respect of the provision of bridging finance and/or securities and the supply of financial services'*	No
5.	Abuja Construction CC 06.10.2010	29.11.2010	R1,925,000	*'Right to payment from the [Dept] in respect of the provision of bridging finance and/or securities and the supply of financial services'*, but also a reference to *'material supply'*	No
6.	Raloto 763 CC 06.10.2010	24.11.2010	R5,739,127	*'Right to payment from the [Dept] in respect of the provision of bridging finance and/or securities and the supply of financial services'*	A pro forma invoice to the contractor dated 24.11.2010 for R5,739,127.65. No indication that goods were received or checked
7.	Tswellang Pele Basadi Construction CC 06.10.2010	08.12.2010	R3,857,860	*'Right to payment from the [Dept] in respect of the provision of building material'*	No
8.	Tokollo Construction CC 06.10.2010	24.11.2010	R7,364,085	*'Right to payment from the [Dept] in respect of the provision of bridging finance and/or securities and the supply of financial services'*	No
9.	Lapeng Construction CC 27.09.2010	24.11.2010	R55,839	*'Right to payment from the [Dept] in respect of the provision of bridging finance and/or securities and the supply of financial services'*	No

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125. The total amount purportedly payable by the Department to Rich Rewards arising from the so-called cessions was R42,343,926.

126. Rich Rewards' bank account reflects that, in early January 2011, the Department paid Rich Rewards R45,318,085.93. I attach, marked **'NM 21'**, a copy of Rich Rewards' current account statement for the period 11 December 2010 to 12 January 2011, which was produced in response to a subpoena issued by the SIU and which forms part of the SIU's files. I refer to the payments made on 3 and 4 January 2011, with the source described as *'General Credit – Domestic Trea[sury]'* (a reference to the Department's treasury), underlined on **'NM 21'**.

127. The second example is Dumansi Trading CC (*'Dumansi'*). Again, Dumansi was a material supplier identified by the Department, via the tripartite material supply agreement, as the supplier to several contractors.

128. The table below follows the same format as the Rich Rewards table. Again, the information is taken from the SIU's files of documents.

Cessions to Dumansi Trading CC					
	Contractor and date of construction agreement	**Date of cession**	**Amount of the ceded claim**	**The right ceded**	**Supporting documents?**
	Motobatsi Construction CC 28.09.2010	26.11.2010	R9,273,972	*'Right to payment from the [Dept] in respect of the provision of bridging finance and/or securities and the supply of financial services'*	No

	Moleboheng Developers CC 28.09.2010	26.01.2011	R5,881,468	*'Right to payment from the [Dept] in respect of the provision of building material'* *'Wall plate and completion material'*	No
	Mminathoko Trading 117 CC 28.09.2010	11.11.2011	R1,370,510	*'Right to payment from the [Dept] in respect of the provision of building material'* *'50 wall plates and 50 completions'*	No
	Distinctive Choice 712 CC 30.09.2010	03.12.2010	R5,432,712	*'Right to payment from the [Dept] in respect of the provision of building material'*	No
	Zigana Mbele Construction CC 30.09.2010	06.12.2010	R3,527,622	*'Right to payment from the [Dept] in respect of the provision of bridging finance and/or securities and the supply of financial services'*	No
	Manthabi Civil and Projects CC 30.09.2010	25.11.2010	R11,078,149	*'Right to payment from the [Dept] in respect of the provision of bridging finance and/or securities and the supply of financial services'*	No
	Tahma Development & Projects CC 30.09.2010	26.01.2011	R2,117,820	*'Right to payment from the [Dept] in respect of the provision of building material'* *'Wall plate and completion material for 50 housing units'*	No
	Ithuteng Consultancy CC 30.09.2010	07.12.2011	R323,220	*'Right to payment from the [Dept] in respect of the*	No

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				provision of building material' *'Material supply for 200 units'*	
	Hata Pele Construction CC 30.09.2010	26.11.2010	R7,385,434	*'Right to payment from the [Dept] in respect of the provision of bridging finance and/or securities and the supply of financial services'*	No
	24 TM Bokamoso CC 29.09.2010	25.05.2011	R8,175,475	*'Right to payment from the [Dept] in respect of the provision of building material'* *'Material supply for wall plate and completion for 200 units'*	No
	Inzuzo Trading 516 CC 30.09.2010	25.11.2010	R3,372,709	*'Right to payment from the [Dept] in respect of the provision of bridging finance and/or securities and the supply of financial services'*	No
	Setsoto Bricks & Construction CC 30.09.2010	01.12.2010	R3,600,000	*'Right to payment from the [Dept] in respect of the provision of bridging finance and/or securities and the supply of financial services'*	No
	Rehauwe Construction & Development CC 27.09.2010	06.12.2010	R1,376,439	*'Right to payment from the [Dept] in respect of the provision of building material'*	No
	Flashcor 137 CC 04.10.2010	30.12.2010	R12,841,002	*'Right to payment from the [Dept] in respect of the provision of building material'*	No
	Makana Women	06.12.2010	R2,072,848	*'Right to payment from the [Dept] in*	No

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	Construction (Pty) Ltd Hobhouse, Mantsopa LM 21.09.2009			*respect of the provision of bridging finance and/or securities and the supply of financial services'*	
	Makana Women Construction (Pty) Ltd Ladybrand, Mantsopa LM 27.09.2010	06.12.2010	R4,376,013	*'Right to payment from the [Dept] in respect of the provision of bridging finance and/or securities and the supply of financial services'* But also a reference to *'cession for 190 housing units'*	No
		06.12.2010	R4,048,459	*'Right to payment from the [Dept] in respect of the provision of bridging finance and/or securities and the supply of financial services'*	No
	Kalane Cleaning & Projects CC 28.07.2011	05.08.2011	R2,719,049	*'Right to payment from the [Dept] in respect of the provision of building material'*	No
	C Max Civil Construction & General Trading (Pty) Ltd 29.12.2010	13.01.2011	R4,697,172	*'Right to payment from the [Dept] in respect of the provision of building material'* *'In respect of 156 housing units ... for material supply'*	No
		07.04.2011	R5,290,336	*'Right to payment from the [Dept] in respect of the provision of building material'* *'Material supply for 136 housing units'*	No

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129. The total amount purportedly payable by the Department to Dumansi arising from the so-called cessions was R98,960,409.

130. Dumansi's bank account reflects that, over the period December 2010 to November 2011, Dumansi received payments from the Department which add up to R99,485,434.46. Of that amount, Dumansi received just less than R63 million in December 2010, and a further just more than R10.5 million in January 2011. I attach, marked **'NM 22'** a copy of a schedule prepared by the SIU based on Dumansi's bank statements for the relevant period. I refer to the list of transactions described as *'Human Settlements'*.

131. The scheme described in respect of Rich Rewards and Dumansi was replicated via purported cessions by many more contractors to many more material suppliers. It resulted in the Department paying out a total of approximately R 631 million over the period 2010 to 2011.

The consequences

132. The Department paid approximately R 631 million without having received anything in exchange. There was no evidence, when the Department made its payments, that it had received value for the payments made, in that houses had been built or part-built to a satisfactory standard.

133. The Department has made extensive efforts to try to ascertain to what extent houses were in fact constructed and materials were in fact delivered, as contemplated in the construction agreements. In other words, the Department has tried to ascertain to what

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extent material suppliers dealt with the money paid to them by the Department honestly and responsibly, by using it to supply materials to contractors for the purpose of constructing the houses contemplated in the construction agreements – and for the purpose for which the money was originally allocated and transferred by national government to the Department.

134. This has been an exceedingly difficult point to get clarity on. In this regard:

134.1 I have referred above to clauses of the construction contract which obliged the contractors to keep information relating to the building project up-to-date, to allow the Department access to such information, and to provide the Department with monthly written progress reports on the status of the project, expenditure to date, and any other information reasonably required by the Department.

134.2 This was not done by any of the contractors. The contractors' paperwork was either totally inadequate or simply did not exist. Nor have the material suppliers ever provided proper reports to the Department.

134.3 One might think that representatives of the Department could simply visit the various sites and prepare reports on what they found. In the end, this is what the Department did, but it was not a simple exercise. When the Department awarded the construction contracts, it split particular housing sites amongst different contractors – for example, several contractors would be appointed to build houses in a particular township, with each contractor responsible for a particular number of houses in that township. It was therefore difficult, if

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indeed possible at all, to determine which contractor had been responsible for what. The difficulties were exacerbated because, in a single township, there were various results – some houses may be completed; others partly completed; others not built at all or barely started; and where construction work had been done, it was often faulty.

135. Aside from the issue of mis-spending of money, this scheme has had the result that many of the intended beneficiaries of the BNG project remained homeless. The Department's flouting of national government's requirements, legislative provisions, ordinary prudent commercial practice, and the like, has had a practical consequence for hundreds of families. Their access to housing has been yet further delayed.

136. The Department contracted two engineering firms, Mafuri Infrastructure Africa (*'Mafuri'*) and E'tsho Engineering Project Management (*'E'tsho'*) to visit the sites, certify work as completed and compliant where appropriate, assess what has still to be built or remedied, and estimate the price of the further work to be done.

137. The estimated price of completing the housing projects reflected in **NM1**, as determined by Mafuri and E'tsho, is in total approximately over R 500 million. To put this in perspective:

137.1 The total original price for completing the housing projects reflected in **NM1** was approximately R 72 500-00 per unit.

137.2 The amount which the Department paid to material suppliers, as described above, was approximately R 631 million

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138. I have already mentioned the example of Besakha, a contractor appointed by the Department to construct 150 houses in Heilbron, in the Ngwathe Local Municipality, who purported to cede a claim to the material supplier Rich Rewards. I referred above to two invoices supposedly issued by Rich Rewards to Besakha for materials, including an invoice (attached as **NM 19** and **NM 20**) in respect of 100 units of *'Wallplate Material'* and 150 units of *'Top Structure Material'*.

139. Mafuri carried out an assessment of Besakha's 150-unit project in Heilbron. Mafuri has determined that:

139.1 In respect of 119 units, nothing has been built in respect of the *'Wallplate'* milestone. The Department must pay for wallplate materials and construction in respect of 119 units, although its payment to Rich Rewards was purportedly made at least partly on the strength of Rich Rewards' supply of 100 units of wallplate material to Besakha. It appears that the Department may have received some value from its payment to Rich Rewards, given that the wallplates in respect of 31 out of the 150 units seem to be complete. However, it did not get the full value.

139.2 In respect of the full 150 units (the Mafuri report refers to 151 units), nothing has been built in respect of the completion milestone. The Department must pay for completion in respect of the full 150 units, although its payment to Rich Rewards was purportedly made at least partly on the strength of Rich Rewards' supply of 150 units of top structure material to Besakha.

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140. I attach, marked '**NM 23**', a copy of Mafuri's project specification table and its letter to me in this regard. I do not include the site by site check sheets.

141. The Mafuri and E'tsho reports reveal that the Department did receive some value from the contractors and building suppliers. (I repeat that it has taken considerable time and effort to determine this.)

142. The point remains, however, that significant amounts were paid out without the Department receiving any value for them. Work and materials already paid for must now be redone, at a further cost to the Department – and ultimately the fiscus and the public.

The actions instituted by the Department against material suppliers and contractors

143. As I stated earlier, the Department has instituted action proceedings against the contractors and suppliers. They are listed in the schedule attached as **NM2**.

144. Against the contractors, the Department seeks orders compelling them to deliver proper statements of account in respect of work done, to debate the statements of account with the Department, and to pay over to the Department any monies found due to the Department as a consequence of the debatement.

145. Against the suppliers, the Department seeks to recover what it paid over to them. The basis of its claim is unjust enrichment.

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146. One of the obstacles to the Department's enrichment-based claims against the material suppliers is the scheme of agreements outlined above. While those agreements stand, the suppliers may raise the defence that the agreements were the *causa* for the payments (and that the payments were therefore not made *sine causa*); and that, in order for the Department to rely on the enrichment claims, it must have the agreements declared unlawful.

147. I point out that, to the extent that a particular supplier spent what it received properly – in other words, on materials delivered to contractors and used in the construction of houses – that supplier will have a defence to the Department's enrichment-based claim.

148. Such a supplier's defence will essentially be that it was not enriched (the funds it received were spent), nor was the Department impoverished (it benefitted to the value of the properly-spent funds). The facts underlying a supplier's defence will be particular to that supplier. The facts will furthermore be tested via action proceedings, with all the benefits of discovery, inspections where appropriate, and the examination and cross-examination of witnesses.

149. I mention that one supplier, namely Corobrik the 73rd respondent, has already tendered to refund to the Department the amount over-paid. From the outset, Corobrik had indicated that while it would sign the materials supply agreement, it did not wish to accept any advance payments. It wished to make claims on the basis of the agreement, namely that payment would be made against a claim in respect of materials actually delivered and certified by the building contractor. Advance payment was nevertheless made, unsolicited, into its bank account.

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These proceedings

150. Against that background, the Department seeks the following relief via these proceedings: Orders declaring the suite of agreements to be unlawful and accordingly void *ab initio*, and in addition or in the alternative, the decisions to make payments; the review and setting aside in terms of PAJA of the Department's decisions to conclude the agreements and the agreements themselves, and the decision to make payments.

151. The purpose of the relief sought is, first, to facilitate the Department's enrichment claims against the suppliers for repayment of the amounts made to them. The Department's purposes in pursuing its enrichment claims against the suppliers are essentially to recover public money and to meet its obligations to recover irregular and unauthorised expenditure.

152. Second, pursuing the relief is consistent with the Department's obligation to fight corruption and maladministration, particularly in relation to public money, and sends a strong message to government officials and the private sector that schemes along the lines of the Department's scheme will not be tolerated.

153. Linked to the primary relief, the Department seeks a stay of the action proceedings until this application has been finally determined. This is because the Department's claim to have the agreements declared unenforceable or reviewed and set aside may have a material bearing on the enrichment claims against the suppliers in the action proceedings, as I have explained.

154. Next, I briefly set out the regulatory framework applicable to the Department's scheme, considering first the procurement aspects and then the Division of Revenue aspects.

The regulatory framework

Procurement

155. As will be clear from the factual background, the Department failed to follow any proper procurement process in respect of –

155.1 its appointment of the contractors (as I explained, the tender process which the Department followed for the appointment of contractors lapsed, and the Department did not try to revive it or go out on fresh tender);

155.2 its selection or identification or appointment of the material suppliers.

156. This breached a series of requirements relating to public sector procurement, well-recognised as being fundamental to our constitutional order. I briefly summarise them below.

157. The starting-point is section 217(1) of the Constitution, which provides that when an organ of state in the national, provincial or local sphere of government contracts for goods and services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost-effective.

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158. That requirement is carried through in various pieces of legislation which apply to the Department.

159. The Treasury Regulations of March 2005, made in terms of the Public Finance Management Act 1 of 1999, regulate supply chain management by national and provincial departments, including the Department. Amongst other things:

159.1 In terms of regulation 16A3, an accounting officer – in the Department's case, the Head of Department – must develop *and implement* a supply chain management system for the acquisition of goods and services. The supply chain management system must be fair, equitable, transparent, competitive and cost-effective.

159.2 Regulation 16A(6) sets out specific requirements which apply to the procurement of goods and services, including that the accounting officer must ensure that bid documents and the general conditions of contract are in accordance with the prescripts of the Construction Industry Development Board, in the case of bids relating to the construction industry.

159.3 Regulation 16A8 regulates compliance with ethical standards. It requires officials and roleplayers in a supply chain management system to comply with the highest ethical standards, and to be scrupulous in their use of public property.

160. The Preferential Procurement Policy Framework Act 5 of 2000 (*'the PPPFA'*) requires organs of state to determine a preferential procurement policy, and to

implement it, within a particular framework. The PPPFA prescribes in certain respects how tenders must be evaluated and awarded.

161. The Preferential Procurement Regulations, 2001, which were made in terms of the PPPFA, applied at the time that the construction contracts and tripartite material supply contracts were concluded. They make it clear that an organ of state such as the Department may only apply a preferential procurement system which is in accordance with the PPPFA and the Regulations. They also contain detailed provisions on how tenders must be evaluated and awarded.

162. The Department has, and at all times relevant to these proceedings had, a Supply Chain Management Policy (*'the SCM Policy'*). It provides that the Department must follow a competitive bidding process for all procurement above an estimated value of R100,000. It also provides that the PPPFA and Preferential Procurement Regulations apply to all procurement above the value of R30,000 for the development of housing.

163. The constitutional requirements relating to state procurement – that state procurement be fair, equitable, transparent, competitive and cost-effective – and the legislation outlined above serve various purposes:

163.1 Compliance with the principles of fairness, equity and competitiveness prevents – or at least helps reduce – the corrupt award of government business.

163.2 Compliance with those principles also means that lucrative government business opportunities can be competed for equally by members of the

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public. Everyone has a chance to compete fairly and to build up his or her own business on the strength of government work.

163.3 The requirement of competitiveness, together with the more specific requirements on how bids must be evaluated and awarded, helps to ensure that government work is awarded to persons who are able to do the work. The Preferential Procurement Regulations aim to ensure that organs of state pay proper attention to, and properly evaluate, the functionality component of bids. (These requirements also aim to ensure that work is awarded to a bidder who can do the job at the best price. In the context of these proceedings, this is not an important factor, because contractors were to be paid a set price per housing unit, and would not have competed on price.)

164. The Department did not comply with the procurement requirements which applied.

165. Regarding the construction contracts: The Department split the construction contracts amongst contractors who had submitted bids for the tender which lapsed and contractors on its database. It did so despite the fact that of the 361 bids which were received, 105 were disqualified for basic bid compliance reasons (e.g. no valid tax clearance certificate was submitted), and 147 bids were disqualified because they did not meet the minimum functionality threshold.

166. Regarding the tripartite material supply agreements: There is no indication at all as to how the Department identified the material suppliers. It is a gross example of the direct award of government business without a proper procurement process, made all

the more flagrant by the fact that the Department then paid substantial amounts of money to the suppliers and received nothing in exchange.

The Division of Revenue Act

167. I have already explained that the funds at issue in these proceedings were allocated by the National Treasury to the Department for the purposes of BNG. The allocation was provided for in DORA 2010 and was a conditional, specific-purpose (Schedule 5) allocation.

168. That being so, various requirements apply:

168.1 The allocation may only be used for the purpose stipulated in the relevant schedule (section 15(1)).

168.2 Funds from the allocation may not be transferred to any other entity for the performance of the function envisaged in the allocation unless the Department *'has entered into a payment schedule with the entity ... that has been approved by the National Treasury'* (section 15(2)), <u>and</u> –

168.2.1 *'it is a payment for services rendered or goods received, which services or goods were procured in accordance with the supply chain management policy or procurement policy of the relevant province ... and for which adequate documentation for payment has been received'* (section 15(2)(b)); <u>or</u>

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168.2.2 *'in the case of an advance payment ... (i) the receiving officer has certified to the National Treasury that the transfer is not an attempt to artificially inflate its spending estimates and that there are good reasons for the advance payment or transfer;* <u>*and*</u> *(ii) the National Treasury has approved the advance payment or transfer'* (section 15(2)(c)).

169. I have already explained that where a conditional allocation has not been spent by the end of the financial year, it reverts to and must be repaid to the National Revenue Fund, unless the National Treasury is satisfied that the unspent allocation has been committed to identifiable projects (section 20). The National Treasury also has the power to withhold allocations, and to stop allocations, where a province or municipality does not comply with DORA or where substantial under-spending is anticipated (sections 16 and 17).

170. A transfer prohibited by section 15(2) of DORA constitutes unauthorised expenditure as contemplated in the PFMA (section 33(1)(a)).

171. Any transfer or spending in contravention of DORA constitutes irregular expenditure in terms of the PFMA (section 33(2)).

172. I submit that the payments to suppliers were clearly unlawful, because they were made in breach of DORA.

173. More to the point for the purpose of these proceedings, I submit that the conclusion of the agreements was unlawful because the object they sought to achieve – namely the

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facilitation of payments in contravention of DORA, by lending credibility to those payments – was unlawful.

174. I am advised that, where an agreement seeks to achieve an unlawful object, the agreement may be unlawful notwithstanding that it is otherwise unobjectionable. Here, although building contracts, contracts regulating the supply of materials and deeds of cession are in themselves perfectly lawful, the agreements at issue in these proceedings are, I submit, unlawful, because they were concluded with the intention of defrauding the fiscus.

Grounds for the relief sought

175. I submit that the construction agreements and the material supply agreements listed in **NM 1,** as well as the decision and decisions or decisions to make payments to the material suppliers are illegal, and fall to be declared void *ab initio* and unenforceable.

176. Alternatively and in any event, the agreements fall to be reviewed and set aside applying the public law requirement of legality and in terms of the provisions of PAJA. In this regard:

176.1 The Department's decision to conclude the agreements and make payments and its conclusion of the agreements constitute the exercise of public power, which is constrained by the doctrine of legality.

176.2 The Department's decision to conclude the agreements and make payments and its conclusion of the agreements also constitute administrative action as

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contemplated in PAJA, and are therefore subject to administrative law requirements.

177. Although agreements of the nature of construction agreements and agreements governing the supply of building materials are in themselves perfectly lawful, the agreements at issue in these proceedings were concluded for an illegal purpose. They were concluded to facilitate a scheme to spend public funds in contravention of DORA, and thereby to defraud the fiscus.

178. They were also concluded in contravention of the provisions of DORA 2010, specifically section 15(1) and 15(2).

179. I submit that the agreements are therefore illegal and unenforceable because they do not comply with one of the requirements for contractual validity, namely that an agreement must be lawful to constitute a contract.

180. The agreements are also illegal and unenforceable on the basis of public law principles. The doctrine of legality applies to the exercise of all public power, and the state does not have the power to conclude unlawful agreements.

181. Furthermore, aside from the illegal nature of the agreements, all of the agreements are reviewable and fall to be set aside on the basis that the Department did not follow any proper procurement process before concluding them.

182. In the circumstances, the agreements are reviewable in terms of the following provisions of PAJA:

182.1 mandatory and material provisions of empowering provisions were not complied with (section 6(2)((b) of PAJA);

182.2 the agreements were concluded –

182.2.1 for reasons not authorised by the empowering provisions (section 6(2)(e)(i));

182.2.2 for an ulterior purpose or motive (section 6(2)(e)(ii));

182.2.3 because irrelevant considerations were taken into account or relevant considerations were not considered (section 6(2)(e)(iii));

182.2.4 in bad faith (section 6(2)(e)(v));

182.3 conclusion of the agreements –

182.3.1 contravenes a law and/or is not authorised by the empowering provision (section 6(2)(f)(i));

182.3.2 was so unreasonable that no reasonable person could have concluded the agreements (section 6(2)(h);

182.3.3 was otherwise unconstitutional or unlawful (section 6(2)(i).

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The timing of this application

183. I am advised that –

183.1 review proceedings under the common law or under PAJA must be instituted without unreasonable delay. In terms of PAJA, review proceedings must, be instituted no later than 180 days after the date on which the person seeking review becomes aware (or might reasonably have become aware) of the administrative action and the reasons for it;

183.2 in terms of section 9 of PAJA, an applicant may apply for the time periods in the Act to be extended. In terms of sections 9(1)(b) and 9(2) the time periods may be extended by agreement or by a Court, which may grant an application in terms of section 9(1) if the interests of justice so require.

184. I explain below the delay in the bringing of this application. I respectfully submit that there are grounds for condonation and for an extension of the 180 day time period, and that it is in the interests of justice that the Court grants the application for condonation.

185. Implementation of the unlawful and fraudulent scheme took place over a period from 25 November 2010 up until March/April 2011.

186. I now deal with the remaining time periods from 2011 onwards.

2011 Period

186.1 From the records the Department has at its disposal, it appears that National Treasury was informed in January 2011 that advance payments had been made to material suppliers and contractors.

186.2 The Minister of Human Settlements requested an investigation into these advance payments in February 2011, and stopped any further payments under the ERP in March/April 2011.

186.3 The Department was until December 2011 headed by Mpho Mokoena, the HOD, who directly responsible for the unlawful and fraudulent scheme. Other senior officials who had been part of the planning and/or implementing of the ERP were still employed by the Department.

186.4 The National Department requested an investigation into the advance payments, as it was reported and confirmed on the HSS system that irregular payments were being made to contractors and material suppliers. In its investigation, it became evident that some senior employees at the provincial department had executed the ERP.

186.5 All or most of the employees who had been involved in the ERP payments were retained during 2011 whilst the Department carried out internal investigations into what transpired.

186.6 The Department decided to engage NURCHA to investigate the matter. NURCHA is a Developmental Finance Institution listed as a Public entity in Schedule 3 to the Public Finance Management Act, and is a company not for profit. Its mandate is to act as a catalyst in the delivery of sustainable human settlements for the under serviced and lower income sectors of the population. NURCHA was appointed to assist the Department with the investigation into the implementation of the ERP, and to establish whether the building contractors and material suppliers had delivered value to the Department. On or about 17 March 2011 a letter of appointment engaging the services of NURCHA was agreed to, and on 24 June 2011 the Department and NURCHA entered into a formal service level agreements (SLA) in terms of which the Department engaged its services. I attach, marked **"NM 25"**, a copy of the SLA.

186.7 The SLA initially ran from 17 March 2011 to 31 March 2012. It was extended in terms of a further SLA dated 26 April 2012 for the period 1 April 2012 to 31 March 2014, and thereafter in terms of an addendum dated 14 February 2014, for a further period from 1 April 2014 to 31 March 2015.

186.8 The stated purpose of the engagement of NURCHA was to support the recovery efforts of the Department, and for that purpose to provide monitoring and reporting on all 106 housing projects. However, NURCHA failed to meet its obligations under the SLA. The consequence was that the engagement of NURCHA, far from facilitating the process, slowed the process substantially. Despite the extension of the term of the SLA, in the event NURCHA did not produce the information which the Department required.

2012 Period

187. Mpho Mokoena was transferred to another provincial department, and I was appointed as the new HOD starting in January 2012.

188. When I took over as the HOD at the beginning of 2012, it took me some time to become conversant with the situation. Several months into office, I discovered what appeared to be serious financial irregularities regarding the BNG housing project.

189. At this stage I was only aware of that a group of senior employees of the Department had been involved in the ERP, and had entered into contracts with various contractors and material suppliers and had signed off on the advance payments.

190. On or about 5 March 2012, the Special Investigative Unit ("SIU") was mandated to investigate the allegations of any fraud, corruption and maladministration related to the development and delivery of low cost housing. This investigation (which was directly related to the advance payments made by the Department) was finalised on 11 December 2014. It found that the Department's employees had acted unlawfully in various respects.

191. The scale and depth of the ERP was, at the beginning of 2012, not clear. The employees who were later implicated were not willing to assist with the preliminary investigations carried out by the Department into the matter, including the agreements with the contractors and material suppliers

192. In April 2012, the Premier and the MEC for Human Settlements called a meeting of senior Department officials to discuss the fact that contractors appointed to construct

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the BNG-funded houses were simply not performing. At that meeting, it emerged that the contractors' failure to perform under their contracts was largely caused by the fact that materials had not been delivered to them by the suppliers.

193. There had been an expectation that, given the Department's massive transfer of funds to material suppliers, particularly in December 2010 and in the early part of 2011, the contractors would receive from the material suppliers the materials necessary to perform under the construction agreements. However the suppliers, or a significant number of them, had not delivered the material to the contractors.

194. The Department then appointed Open Waters as Forensic Auditors to investigate certain of the allegations made by the contractors. The Department and Open Waters entered into a service level agreement on 19 June 2012. Attached marked **"NM 26"** is a copy of the SLA.

195. Open Waters submitted its preliminary report to the Department on 29 June 2012. Once the Department had considered that report, it suspended six senior managers and three junior officials, pending disciplinary proceedings to be instituted against them.

196. This was plainly necessary, but it had the unfortunate effect that the Department was left without senior managers. Furthermore, the suspended officials had all the contracts and financial information or large portions thereof in their possession. Their offices were sealed when they were placed on suspension, but no relevant information was found in those offices, and they refused to co-operate with the investigation into what had gone on under their watch.

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2013 period

197. Formal charges against the suspended employees were sent out on 21 January 2013. These charges were amended in the following months as more information came to light from the various reports and investigations which were underway. The charges were amended on 13 March 2013 and further on 30 May 2013.

198. Between November 2012 and July 2013 most of the documentary information we received came to us piecemeal, as different entities were investigating the conduct of the Department's employees and would be in possession of a relevant document or set of documents. This slowed down the progress of the other investigation.

199. The Department took legal advice as to how it should proceed. On the basis of that advice, in August 2013 we instructed our attorneys to proceed with actions against contractors or building suppliers in an attempt to recover some of the wasted expenditure.

200. From August 2013, an enormous amount of documentation was sourced from various quarters and provided to our attorneys. The agreements at issue in these proceedings related to more than 100 housing projects. NURCHA had been appointed to collate and analyse all of the documentation and the financial information, for example how much had been paid to contractors and/or suppliers, what material had been delivered, how much unused material was found on site, how much must be claimed from contractors and suppliers, and so forth.

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201. A major stumbling block was the lack of capacity on the part of NURCHA, which provide assigned only one to assist with this very substantial workload. As a result of this limited capacity, the amount of documentation involved, and the difficulties which the Department had in locating and verifying copies of the documentation, it took a long time for NURCHA to verify the information.

202. When NURCHA's information was then compared with information held by the Department's finance unit, very significant discrepancies were found between the two. We requested NURCHA to redo the verification exercise, as explained above, at least twice. This made the process painfully slow.

203. The Department's finance unit in the meantime sought to gather supporting documentation in relation to the payments made to contractors and suppliers. It approached banks for copies of bank statements indicating its payments to contractors and suppliers, in order to confirm the amounts to be claimed per contractor and/or supplier. Certain documentation (for example payment stubs and invoices) was in the possession of the SIU and Open Waters.

204. It took time to secure this documentation, as the SIU and Open Waters were busy with investigations using the same source material. Other documentation had been archived with a private storage firm, Metrofile, and it took time locate to retrieve this documentation without the assistance of the suspended employees.

205. Further, a lot of the documentation on which we have ultimately relied for the drafting of this application was being used at the disciplinary hearing as source material. That

hearing ran for a considerable period, with the final outcome only being made known on 30 April 2015.

206. The evidence at the disciplinary hearing was the first opportunity we had to find out what had actually transpired during November 2010 and March/April 2011, when the advance payments were being made. This application to set aside the actions of the Department's employees has had to be substantiated by the evidence from the hearings.

207. The volume of documents provided over time to the department's attorneys was very substantial. The attorneys studied the information provided, and requested further consultations with NURCHA and the Department's finance unit in order to clarify some aspects.

208. We then spent many hours consulting with our instructing attorneys and counsel between September 2013 and October 2013. On the basis of the legal advice which we were given, we instructed our attorneys to issue summons against the contractors and suppliers on the basis of unjustified enrichment. The action proceedings were instituted against the contractors and suppliers in December 2013.

2014 – 2015 Period

209. Whilst the action proceedings were underway, the disciplinary hearings of the suspended officials took place, concurrently with those proceedings and investigations, and the SIU's investigations.

210. The Department's difficulties were compounded by the fact that it had severe in-house constraints with regard to legal services. Before November 2012, it did not have a dedicated legal services unit. In November 2012, Advocate Phaladi was assigned to the Department as Director: Legal Services. She was the only legal adviser assisting the Department, and she was also still performing her functions as a Senior State Law Adviser. She was responsible for co-ordinating all of these investigations. The various different investigators all relied on her for information.

211. At this stage, the disciplinary proceedings were a priority. As by law they must be dealt with expeditiously where employees are on suspension, Advocate Phaladi's time was mostly focussed on the disciplinary proceedings. For this reason, she was often not available to consider and advise on the steps to be taken by the Department against the suppliers and contractors.

212. Advocate Phaladi only became available for full time consultation early in 2014. However, in July 2014 she was appointed as Chief Director Corporate Services in the Department of Co-operative Government and Traditional Affairs. A new legal adviser, Advocate Mantso, was then appointed to the Department. He was not acquainted with the matters. He had to study the files, and had to consult frequently with Advocate Phaladi when she could be available, and with me.

213. A number of notices of exception were delivered to the actions which the Department had instituted. Two exceptions were argued. One of them succeeded, and judgment is awaited in respect of the other one.

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214. In August 2015, the Department decided that review proceedings should be instituted in order to address the underlying illegality of the scheme. Our existing counsel were instructed to prepare a draft application. Once that draft had been received and reviewed, the Department instructed our attorneys to instruct fresh counsel to prepare a review application. This was done in December 2015.

215. By this time, the volume of material to be examined, analysed and considered was very large. Counsel required further instructions on certain factual questions. It took us a substantial period to work through this, over and above our daily tasks at the Department.

<u>Condonation / extension of time</u>

216. I submit that, in all the circumstances, the Department has not delayed unreasonably in bringing this application, and that the explanation for the delay is reasonable under the circumstances.

217. From the outset, there were many practical and systemic difficulties in obtaining information, allocating resources and people to the investigations and the preparation of the analyses which would enable the Department to decide what action to take, and then taking that action. The delay in proceeding was exacerbated by the movement of employees between departments. And underlying all of this was the continuing difficulty of the unavailability or unwillingness to assist on the part of the suspended officials.

218. In order to deal with this matter, the Department and those advising it have had to review, analyse and distil a vast amount of information, in order fully to understand what has happened, and then identify and formulate the appropriate way forward.

219. I point out that because of the practical difficulties which were encountered in achieving this:

219.1 The Department appointed NURCHA to assist it to establish whether the suppliers and contractors had given value for the payments which had been made;

219.2 The Special Investigation conducted an investigation into allegations of fraud, corruption and maladministration; and

219.3 The Department appointed Open Waters as forensic auditors to investigate certain of the allegations made by the contractors.

219.4 Meanwhile, the Department undertook the disciplinary proceedings against certain of senior officials who had been involved in the scheme.

220. If it had not been for all of these circumstances, the Department would have been in a position to institute the review proceedings sooner, and would have done so.

221. I point out further that:

221.1 The unlawful scheme was born in fraud;

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221.2 The scheme was founded on systematic and sustained maladministration in breach of section 217 of the Constitution and the procurement legislation to which I have referred above;

221.3 There was uncertainty on the part of the Department, which acted on legal advice, as to whether the most appropriate route to follow in order to remedy the situation. The Department was advised that the most appropriate route was to institute actions for enrichment, and it acted accordingly.

221.4 The failure to challenge the relevant administrative actions earlier was the result of the Department's good faith and sustained attempts to resolve the problem through other mechanisms. The Department did not simply sit back and ignore the situation.

221.5 The MEC applies for condonation of the delay and (in terms of section 9(1) of PAJA) for an extension of the prescribed time period. I respectfully submit that it is in the interests of justice that this be granted.

222. I draw attention to the following considerations in addition to those which I have already mentioned:

222.1 The entire scheme was fraudulent, and tainted by the fraud.

222.2 The contractors and suppliers must have known that it was unlawful for the scheme to be constructed in this manner, and for payments to be made in this

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manner. They must have known that this was fundamentally inconsistent with the manner in which the state ordinarily and lawfully does business.

222.3 As I have pointed out, some of the invoices submitted by contractors and suppliers were themselves fraudulent.

222.4 The merits of the review are, I respectfully submit, very strong.

222.5 The sums paid over by the Department under the unlawful scheme, and now sought to be recovered by the Department, are very substantial.

222.6 It is in the public interest that substantial amounts of public money which have been unlawfully spent, should be recovered.

222.7 This is particularly so where the money has been diverted from the intended purpose of delivering housing to members of poor communities who do not have access to adequate housing, in fulfilment of their constitutional rights.

222.8 It is in the public interest that those who have benefitted from fraud and otherwise unlawful activity should not be able to retain the benefits of the fraud and illegality.

223. Allowing the consequences of the scheme to stand is, I submit, inconsistent with the duty on the state to fight corruption and maladministration, particularly in relation to public money.

224. I submit that the delay will not prejudice the respondents. The relief sought in this application will not, at this stage, have any direct impact on the respondents. The Department does not in these proceedings seek to recover funds from any of the respondents. The enrichment-based claims are the subject of the actions. As I have explained, to the extent that a particular supplier or contractor has a defence to the Department's enrichment-based claim, its defence can and will be properly and fully dealt with in the action proceedings.

Hearsay evidence

225. I submit that, to the extent that certain of the allegations in this affidavit constitute hearsay evidence, such evidence should be admitted in the interests of justice.

226. First, much of the evidence which falls into this category was given under oath, and the deponents subjected to cross-examination, at the disciplinary hearing referred to above. I submit that this increases the reliability of such evidence and reduces the prejudice attached to hearsay, namely that the evidence is untested.

227. Second, these are review proceedings, not criminal proceedings. Moreover, as I have explained, the relief sought in these proceedings will not have a direct impact on the respondents, because the Department does not via these proceedings seek to recover funds from any of the respondents. The Department's claims to recover funds from the respondents are the subject of the actions, in which the Department's claims and the respondent's defences will be set out and tested with all the benefits and safeguards of trial procedure, including discovery, testimony under oath and cross-examination.

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I therefore submit that the respondents will not be prejudiced by admission of the evidence in these proceedings – or, if there is any prejudice, it is minimal and indirect.

228. Third, as I have already said, former Department employees from whom corroboration of the hearsay would ordinarily have been sought have been uncooperative or simply unavailable.

229. Fourth, I submit that the nature of the relief sought – the setting aside of a dishonest scheme which has defrauded the fiscus – makes it in the interests of justice that the evidence be admitted. The fraudulent nature of the scheme is, I submit, clear or can reasonably be inferred from the documentary evidence produced as attachments to these founding papers.

Conclusion

230. The Department has engaged the services of both senior and junior counsel, which in the circumstances I submit was reasonable.

231. In the premises, the applicant requests that this Honourable Court grant the relief set out in the notice of motion.

NTHIMOTSE MOKHESI

I certify that:

1. the deponent acknowledged to me that –

(a) he knows and understands the contents of this declaration;

(b) he has no objection to taking the prescribed oath;

(c) he considers the prescribed oath to be binding on his conscience;

2. the deponent thereafter uttered the words "I swear that the contents of this declaration are true, so help me God";

3. the deponent signed this declaration in my presence at the address set out hereunder on 21 December 2016.

COMMISSIONER OF OATHS

Duncan Harley Murray
LOVIUS BLOCK
31 First Avenue, Westdene, Bfn.
COMMISSIONER OF OATHS
PRACTICING ATTORNEY (RSA)

Duncan Harley Murray
LOVIUS BLOCK
31 First Avenue, Westdene, Bfn.
COMMISSIONER OF OATHS
PRACTICING ATTORNEY (RSA)

IN THE HIGH COURT OF SOUTH AFRICA
(FREE STATE DIVISION, BLOEMFONTEIN)

Case no:

In the matter between

THE MEMBER OF THE EXECUTIVE COUNCIL OF THE DEPARTMENT OF CO-OPERATIVE GOVERNANCE, HUMAN SETTLEMENTS AND TRADITIONAL AFFAIRS, FREE STATE PROVINCE — Applicant

and

SCENIC ROUTE TRADING 802 CC — First Respondent

And the 105 further respondents listed in annexure 1 to the notice of motion

AFFIDAVIT

I, the undersigned,

HERBERT LUBITA

hereby declare under oath as follows:

1. I am employed by the Special Investigating Unit (**"SIU"**) as a Project Manager stationed at the Special Investigating Unit Office, 2nd Floor Telkom Building, Zastron Street, Bloemfontein.

2. I am duly authorised to depose to this affidavit in support of the main application.

3. The facts and allegations set out herein fall within my own personal knowledge and/or are apparent from documentation under my control, unless the contrary is stated or unless the context indicates otherwise.

4. The contents of this affidavit are, to the best of my knowledge and belief, both true and correct in all respects.

5. I have read the Founding Affidavit of N T Mokhesi. I confirm that the contents thereof are true and correct in as far as any reference is made to me.

6. I further confirm that the SIU was mandated to investigate irregularities pertaining to the advance payments made by the Department to the various material suppliers. I will briefly set out the SIU's terms of reference and the objectives of the investigation.

Terms of Reference:

7. Implied in the terms of reference of the SIU was the mandate to investigate and to recover monies in respect of:

   7.1 advance payments made to service providers (*inter alia* building material suppliers and building contractors);

7.2 the procurement of goods or services by or on behalf of the Department of Human Settlements and payments made in respect thereof in a manner that was:

a) not fair, competitive, transparent, equitable or cost-effective;

b) contrary to applicable legislation;

c) contrary to applicable manuals, guidelines, practise notes or instructions issued by National Treasury or the applicable Provincial Treasury;

d) contrary to manuals, policy, procedures, prescripts, instructions or practices of or applicable to the Department of Human Settlements; or

e) conducted or facilitated by, or through the intervention of officials or employees of the Department of Human Settlements with undeclared conflicts of interests; and

7.3 the incurring of any related:

a) unauthorised expenditure; and/or

b) irregular expenditure; and/or

c) fruitless and wasteful expenditure; and/or

d) expenditure not due, owing or payable; and/or

e) loss of funds

incurred by the Department of Human Settlements in relation to payments made to building material suppliers, building contractors, consultants and/or service providers in respect of the Department's low-cost housing scheme;

7.4 any losses suffered by the Department as a result of –

a) the mismanagement of the expenditure of its funds; or

b) theft, fraud or other unlawful conduct and irregular practises of third parties or of officials or employees of the Department of Human Settlements.

8. The main focus of our investigation was into alleged irregularities in respect of advance payments made to service providers by the Free State Department of Human Settlements with specific reference to:

a) alleged non-compliance with the provisions of the Public Finance Management Act in general and relevant legislation, specifically the Division of Revenue Act;

b) alleged non-compliance with Supply Chain Management procedures; and

c) the commission of any criminal offence, the existence of civil liability and/or act(s) of misconduct in respect of any Departmental officials.

Objectives of the investigation:

9. The primary objectives of this investigation, were to –

9.1 review compliance with the prescribed legislative/policy frameworks in respect of the procedures and processes followed with regard to the payment of advances and the appointment of contractors; and

9.2 investigate the commission of any criminal offence, the existence of civil liability, and/or act(s) of misconduct on the part of any Departmental officials.

HL LUBITA

I certify that:

1. the deponent acknowledged to me that –
   (a) he knows and understands the contents of this declaration;
   (b) he has no objection to taking the prescribed oath;
   (c) he considers the prescribed oath to be binding on his conscience;
2. the deponent thereafter uttered the words "I swear that the contents of this declaration are true, so help me God";
3. the deponent signed this declaration in my presence at the address set out hereunder on 23rd December 2016.

COMMISSIONER OF OATHS

COMMISSIONER OF OATHS
JUAN VAN SCHALKWYK
ATTORNEY ADMITTED I.T.O. ACT 53/1979
R.S.A. 12 BARNES STREET, BLOEMFONTEIN

MD-SUP-213

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NATIONAL HOME BUILDERS
NHBRC
REGISTRATION COUNCIL

APPLICATION FOR REGISTRATION- AR003 (v1)

Note: The time taken to process the application is dependent on the thorough completion of this form. Please observe the following basic principles. Write in black pen. Print one letter per box. Take the time to complete all sections to the document and attach relevant documentation where necessary.

For office use only App No.:

SECTION A: COMPANY DETAILS

Company Name: UNITAL Holdings (Pty) Ltd

Trading Name: UNITAL Holdings (Pty) Ltd

Postal Address: PO Box 93442 Boordfontein

Physical Address: 3 Lees Str Wynberg Sandton

Postal Code: 0201

Town: Sandton

Region

- ○ Eastern Cape
- ○ Free State
- ☒ Gauteng
- ○ KwaZulu-Natal
- ○ Mpumalanga
- ○ Northern Cape
- ○ Limpopo
- ○ N/West Province
- ○ Western Cape

Telephone Number: (011) - 2622561

Fax Number: (011) - 2622566

Cell Number: 0832787453

E-mail address:

Year Started Trading: 2013

Number of Employees:

Number of Houses built during the last three years

Year	Number	Year	Number	Year	Number

Company Registration Number: 2013 / 085131 / 07

VAT Registration Number:

Bargaining Council Registration Number:

Please attach copies of all the relevant registration documentation

Type of legal personal/institution

- ☐ Close Corporation
- ☐ Partnership
- ☐ Sole Trader
- ☐ Trust
- ☒ PTY (Ltd)
- ☐ Ltd
- ☐ PLC
- ☐ PHD
- ☐ Municipality

Main Business Area

- ☐ Home Building Developer
- ☒ Home Building Contractor
- ☐ Alterations and Additions
- ☐ Estate Agent
- ☐ General Contractor
- ☐ Subsidy Housing
- ☐ Other

How many units do you intend to build this year?

- ☐ 0-5
- ☐ 6-10
- ☐ 11-15
- ☐ 16-20
- ☐ 21-30
- ☐ 31-50
- ☐ 51-75
- ☐ 76-100
- ☐ 101-250
- ☐ 250-500
- ☐ 501-1000
- ☐ 1001 or more

Type of building to be erected

- ☒ Single Storey
- ☐ Double Storey
- ☐ More than two Storeys
- ☐ Apartment Blocks
- ☐ Conventional Masonry
- ☐ Timber Framed (SABS 082)
- ☐ Rational Design
- ☐ Agrément Certified

HDI status

Yes ☐ ☐ No

- HDI% ☐
- Women% ☐
- Disabled% ☐
- Black% ☐
- Women% ☐
- HDI Management ☐
- BEE% ☒
- Total ☐

SECTION B: DIRECTOR DETAILS

Please complete the following details for all Company Directors. Copies of the relevant ID book must accompany this application form.

Managing Director

Title	Initials	Surname	Shareholding	ID Number
MR	JL	LI 0832787453	70	5706055290180

Qualifications: COMPANY DIRECTOR

Experience: 20 YEARS

Title	Initials	Surname	Shareholding	ID Number
	TA	MALEMBE 0721503891	30	9007040648087

Qualifications: COMPANY DIRECTOR

Experience: 5 YEARS

Title	Initials	Surname	Shareholding	ID Number

Qualifications:

Experience:

Title	Initials	Surname	Shareholding	ID Number

Qualifications:

Experience:

Title	Initials	Surname	Shareholding	ID Number

Qualifications:

Experience:

Title	Initials	Surname	Shareholding	ID Number

Qualifications:

Experience:

Should there be more than 7 directors, please copy this page and add the relevant directors.

SECTION E: TECHNICAL MANAGEMENT OR CONTROL

All registered members must maintain adequate levels of technical control to monitor and maintain construction quality. These persons may be approached to explain the technical management control systems in your company. This applies to development companies as well as to contracting companies.

The Person responsible for Construction Quality in your Company.

ID No. 5509025123089

Title: MR
Initials: C
Surname: KOTZE
Position: SITE MANAGER

Telephone Number: (079)- 3119511
Fax Number: ( )-
Cell Number: 0793119511

Qualifications: CHEMICAL ENGINEERING DIPLOMA

Experience: 10 YEARS PROJECT MANAGER BUILDING

Has this person received a copy of the Home Building Manual? ◯ Yes ◯ No

On Registration your company will be obliged to meet these requirements. Please ensure he has this document and takes appropriate action in sufficient time.

The Engineering Firms you normally use for Engineers Foundation Design and Certificates.

Foundation design is an important component of NHBRC's Home Building Manual (See Part 1, Section 2) and Dwelling Enrolment Procedures. Please provide the relevant engineers' details.

Title: MR
Initials: C
Surname: JOUBERT
Telephone Number: (083)- 2716080

Company:
Fax Number: ( )-

Physical Address: 52 ANAJUBA STR
Town: KRUGERSDORP

Postal Address:
Town: NOORDHEUWEL
Code: 2000

Title:
Initials:
Surname:
Telephone Number: ( )-

Company:
Fax Number: ( )-

Physical Address:
Town:

Postal Address:
Town:
Code:

The Contractors you normally use if you are a Developer

Title:
Initials:
Surname:
Telephone Number: ( )-

Company:
Fax Number: ( )-

Postal Address:
Town:
Code:

Title:
Initials:
Surname:
Telephone Number: ( )-

Company:
Fax Number: ( )-

Postal Address:
Town:
Code:

Please provide on a seperate schedule an explanation of how you monitor the construction quality of your contractors

SECTION F: AFTER SALES CUSTOMER SERVICE / NHBRC CONTACT

All registered members are obliged to meet their obligations to housing consumers and the Council in terms of the Housing Consumer Protection Measures Act.

The Person responsible for After Sales Customer Service in Your Company ID No. 5509025123089

Title: MR
Initials: C
Surname: KOTZE
Position: SITE MANAGER

Telephone Number: ( )-
Fax Number: ( )-
Cell Number: 0793119511

Qualifications: CHEMICAL ENGINEERING DIPLOMA

Experience: 10 YEARS PROJECT MANAGER BUILDING

The Person who will be the main NHBRC contact? ID No. 5509025123089

Title: MR
Initials: C
Surname: KOTZE
Position: SITE MANAGER

Telephone Number: ( )-
Fax Number: ( )-
Cell Number: 0793119511

Qualifications: CHEMICAL ENGINEERING DIPLOMA

Experience: 10 YEARS PROJECT MANAGER BUILDING

SECTION G: PAYMENT DETAILS

To process your application, a payment of R745.61 must be received. If it is not received, your application will not be processed. This application fee is non-refundable. You may wish to pay the annual registration fee (an additional R526.32) at the same time. This will assist in speeding up the process once your application is approved. If your application is rejected, this annual registration fee will be refunded.

Payment may be made either by cash, cheque or direct deposit into the NHBRC's account. Please attach either the payment or proof of the direct deposit to this Application form.

BANK: **First National Bank**
Account Number: **62081366520** **Branch Code: 255005**

SECTION H: DECLARATION

I, the undersigned, being duly authorised to sign this application, hereby certify that the information provided in this document is accurate and complete as at the date of application.

I, on behalf of the applicant, understand that it is an offence in terms of Sectiion 21 of the Housing Consumer Protection Measures Act to knowingly withhold information or to furnish information that I know to be false or misleading required in terms of this Act.
I also know that on conviction of such an offence, I, or the directors, trustees, managing members or officers of the applicant home builder may be subject to a fine not exceeding R25 000 or to imprisonment not exceeding one year on each charge.

I understand that the applicant home builder must comply with the terms of the Housing Consumer Protection Measures Act and any subsequent Regulations issued in terms of this Act.

I hereby authorise the Council to make such enquiries as necessary to verify the information contained on this form.

I attach my application fee.

Signature of Authorised Representative of Applicant

Please Print Name: CHRISTO KOTZÉ

Position: SITE MANAGER

Date Completed: 21 - 06 - 2013
d d m m y y y y

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Companies & Intellectual Property Commission

Republic of South Africa

Companies and Intellectual Property Commission
a member of the dti group

Form CoR 14.1
Annexure A

- This form is issued in terms of section 13 of the Companies Act, 2008 and Regulation 14 of the Companies Regulations, 2011
- Annexure A must be completed and attached to the Notice of Incorporation when it is filed.
- A public company, or a state owned company, must have at least 3 initial directors
- A non-profit company must have at least 3 initial directors.
- A private company, or a personal liability company, must have at least 1 initial director
- A company is not registered until the Commission has issued a Registration Certificate in Form CoR 14.3.

Contacting the Commission

The Companies and Intellectual Property Commission of South Africa

Postal Address
PO Box 429
Pretoria
0001

Republic of South Africa
Tel: 086 100 2472

www.cipc.co.za

Notice of Incorporation
Initial Directors of the Company

The incorporators confirm that each person named below has consented to being appointed in terms of section 66(7)(b) as a director of the company, whose Memorandum of Incorporation is attached.

Full name / former name, if any:	THOKO ALICE MALEMBE
Identity number / Passport number:	9007040648087
Nationality:	South Africa
Date of appointment :	23-May-2013
Designation in company:	Director
Physical address:	18 AVONWOLD SAXONWOLD GAUTENG 2196
Postal address:	PO BOX 93442 BOORDFONTEIN GAUTENG 0201
Cellphone Number:	
Occupation:	DIRECTOR
South African resident:	YES

This form is prescribed by the Minister of Trade and Industry in terms of section 223 of the Companies Act, 2008 (Act No. 71 of 2008).

Companies & Intellectual Property Commission

Republic of South Africa

Companies and Intellectual Property Commission
a member of the dti group

Form CoR 14.1
Annexure A

- This form is issued in terms of section 13 of the Companies Act, 2008 and Regulation 14 of the Companies Regulations, 2011.
- Annexure A must be completed and attached to the Notice of Incorporation when it is filed.
- A public company, or a state owned company, must have at least 3 initial directors.
- A non-profit company must have at least 3 initial directors.
- A private company, or a personal liability company, must have at least 1 initial director.
- A company is not registered until the Commission has issued a Registration Certificate in Form CoR 14.3.

Contacting the Commission

The Companies and Intellectual Property Commission of South Africa

Postal Address
PO Box 429
Pretoria
0001

Republic of South Africa
Tel: 086 100 2472

www.cipc.co.za

Notice of Incorporation
Initial Directors of the Company

The incorporators confirm that each person named below has consented to being appointed in terms of section 66(7)(b) as a director of the company, whose Memorandum of Incorporation is attached.

Full name / former name, if any:	LIANLIANG LI
Identity number / Passport number:	5706055290180
Nationality:	South Africa
Date of appointment :	23-May-2013
Designation in company:	Director
Physical address:	KLIPRIVER ROAD KEMPTON PARK GAUTENG 2000
Postal address:	PO BOX 2425 RANDBURG GAUTENG 2125
Cellphone Number:	
Occupation:	DIRECTOR
South African resident:	YES

This form is prescribed by the Minister of Trade and Industry in terms of section 223 of the Companies Act, 2008 (Act No. 71 of 2008).

Companies & Intellectual Property Commission

Republic of South Africa

Companies and Intellectual Property Commission
a member of the dti group

Form CoR 15.1A

Short Standard Form for Private companies

- This form is issued in terms of section 13 of the Companies Act, 2008 and Regulation 15 of the Companies Regulations, 2011
- This form may be used only to incorporate a private company.
- A private company may be incorporated by one or more persons.
- The incorporators must complete this form by-
  (a) Filling in the Name of the Company, unless it is to be completed by the Commission in terms of Regulation 14 (b) (i) or (iii);
  (b) inserting the number of directors and alternate directors in the space provided;
  (c) inserting the number of authorised shares, in the space provided; and
  (d) each signing and dating the form on a line of the Table.
- There are 4 pages in this form. If filing by paper, all 4 pages must be filled.
- This Form must be filed with Form CoR 14.1, Notice of incorporation, and required annexures and fees.

Contacting the Commission

The Companies and Intellectual Property Commission of South Africa

Postal Address
PO Box 429
Pretoria
0001

Republic of South Africa
Tel: 086 100 2472
www.cipc.co.za

Memorandum of Incorporation
of
UNITAL HOLDINGS

which is a private company, has 2 directors(s) and 0 alternate director(s), is authorised to issue no more than 1000 share(s) of a single class of common shares as described in Article 2, and is referred to in the rest of this Memorandum of Incorporation as "the Company".

In this Memorandum of Incorporation -

a) a reference to a section by number refers to the corresponding section of the Companies Act 2008;

b) words that are defined in the Companies Act, 2008 bear the same meaning in this Memorandum as in that Act.

Adoption of Memorandum of Incorporation

This Memorandum of Incorporation was adopted by the incorporators of the Company, in accordance with section 13 (1), as evidenced by the following signatures made by each of them, or on their behalf.

Name and address of incorporator	Identity or Registration No	Signature	Date
THOKO ALICE MALEMBE PO BOX 93442 BOORDFONTEIN GAUTENG 0201	9007040648087	[signature]	29 May 2018
Cellphone number:	Email address:THOKO7@GMAIL.COM		

MD-SUP-220

"2DM19"

Enquiries: Ms. SC Rapulana
Tel: 24690

DIRECTOR GENERAL
FREE STATE PROVINCIAL GOVERNMENT

REQUEST APPROVAL FOR THE PAYMENT OF HEALTH INSURANCE, ACCOMMODATION, SERVICES, BOOKS AND TRANSPORTATION FOR AN OFFICIAL AND A STUDENT AT BAU UNIVERSITY IN WASHINGTON DC

1. **PURPOSE**
To request approval for the above.

2. **MOTIVATION / BACKGROUND**
There are currently two students (an official, Ms S Mazibuko and a student, Ms Nangu) at BAU University in Washington DC who are funded by the Free State Provincial Government Bursary Programme. They are pursuing their Master's studies in Business Administration.

The University refuse to send the academic results for the 2018/19 year as the medical insurance is still not paid.

It is therefore requested that approval be granted for the necessary authorization and payment to DIRCO to enable the Embassy to make the payment to BAU University in Washington DC for the academic year 2019/2020.

3. **FINANCIAL IMPLICATIONS**
The allocation codes for the Bursary Section are:
Fund: 30007943, Objective: 30005943, Responsibility: 30005943, Project: 18943, Asset: 22943, Infrastructure: 31943, Regional identifier: 30001943, and Item: 668992 (H/H: BURSARIES (NON- EMPLOYEE)

PAYMENT TO BAU WASHINGTON DC					
DESCRIPTION	NUMBER OF STUDENTS	CALCULATION OF DOLLAR TO RAND	TOTAL PER STUDENT	TOTAL IN DOLLARS FOR ALL STUDENTS	TOTAL IN RANDS
Health Insurance	2	14.3276	$1 760.00	$3 520.00	R 50 433.15
Accommodation	2	14.3276	$21 240.00	$42 480.00	R 608 636.45
Services	2	14.3276	$5 400.00	$10 800.00	R 154 738.08
Books	2	14.3276	$370.00	$740.00	R 10 602.42
Transportation	2	14.3276	$2 400.00	$4 800.00	R 68 772.48
			$31 170.00	$62 340.00	R 893 182.58

POWER OF APPROVAL
The power of approval is vested in the Director General

5. **RECOMMENDATION**

It is recommended that approval be granted to process a payment and transfer an amount of **$ 62 340.00 (R893 182.58)** to DIRCO towards the payment of Health insurance, Accommodation fee, Services, Books and Transportation for 2 students at BAU in Washington DC.

SUBMITTED BY:

.... Date: 7/5/19

MAK Kau
Head: IGR

RECOMMENDED / ~~NOT RECOMMENDED~~

Request a deviation to pay for official from bursary & not Pro skilling

.... Date: 10/05/2019

BJ Mkhembu
Acting Chief Director: PHRD

* **RECOMMENDED / ~~NOT RECOMMENDED~~**

.... Date: 15/5/19

Mr AJ Venter
Head Corporate Administration

RECOMMENDED / ~~NOT RECOMMENDED~~

.... Date: 15/5/19

S.B Martins
Chief Financial Officer

S Tsumre

APPROVED / ~~NOT APPROVED~~

.... Date: 17/05/2019

Kopung Ralikontsane
Director General

* ① Accommodation is $100 more than in the approved submission
② R/$ exchange rate to be used is the rate at 15/12/2017.

MD-SUP-222

IN THE COMMISSION ON STATE CAPTURE
HELD IN JOHANNESBURG

BEFORE DEPUTY CHIEF JUSTICE RM ZONDO

<u>EVIDENCE OF:</u>

MXOLISI DUKOANA

SUPPLEMENTARY STATEMENT

CONTENTS

A. INTRODUCTION

I, the undersigned,

MXOLISI DUKOANA

do hereby make oath and say:

1. I am a deponent to this statement and during the preparations with my legal team and in consultation with the Commission's legal team, it became prudent that I should supplement my statement.

2. The facts set out in this statement are within my personal knowledge and belief, unless stated otherwise or the context of what I declare makes the contrary apparent, and are to the best of my knowledge and belief both true and correct.

3. To the extent that I make submissions of a legal nature in this statement, I do so on the basis of the counsel obtained in the course of preparation of this statement from my legal representatives, and which counsel I verily accept to be the correct legal position.

4. In my second statement, I did not deal with one correspondence that I obtained which deals with matters relating to my first testimony on 5 April instant. It is apt I deal with it in the following:

MD

4.1. Jaggersfontein.

B. JAGGERSFONTEIN

5. During my testimony on 5 April 2019, I testified to the Commission what Tony Gupta (Tony) relayed to me during the meeting that I was caused to attend at the Gupta Compound by Magashule on the pretext that I was going to address a dinner for the purposes of fundraising for the ANC in the Free State.

6. It would be recalled that I testified that Tony told me that from the Jaggersfontein development or mine project, Tony stated in the presence of Magashule and Duduzane Zuma that including him, they were getting R1m per month.

7. Following my testimony on 5 April 2019, it appears on 19 April 2019, the shareholders of Jaggersfontein convened a meeting to discuss my testimony. For ease of reference, I annex hereto marked **"2DMS 1"** a copy of the minutes of their meeting.

8. In the said minutes, a reflection is made about a meeting held on 17 September 2010 at Parys in the presence of Magashule wherein his advisor, one Mr Jan Botes, solicited on behalf of Magashule, a 4% shareholding from Jaggersfontein directors without having to pay for it.

9. I leave the investigation of this matter into the capable hands of the Commission.

10. I now turn to a document I mistakenly did not attach in my second statement.

MD

C. EMAIL CORRESPONDENCE BETWEEN MISTERS MPAMBANI AND SODI

11. AD PARA 52.1, I made reference to the email exchanges between Mpambani and Sodi relating to payments effected for asbestos heist. It appears I only annexed the spreadsheet and not the copy of the said email. I annex hereto marked **"2DMS 2"** being a copy of the email exchange in issue.

12. The email from Mpambani to Sodi reads:

> "Sho Eddie
>
> I have effected the payments in 2 batches. Kindly find attached the updated schedule with the following minor adjustments:
> JT from R1m to R 500k"

13. I hope the issues supplemented above are in order.

D. CONCLUSION

14. Last month I was furnished with a voluminous information showing how corruption at the Free State Human Settlements Department continues unabated through implementing agents.

MD

15. In the said information, the company by the name of 605 Consulting, of which the late Mpambani is the sole Director, continues to be paid by the said department as late as 18 June 2019—two years after his unfortunate death.

16. Apparently, Mpambani's company builds houses at Phiritona township, Heilbron. I have instructed my legal team to furnish the Commission's Legal Team with the said information for a proper investigation.

17. That is all I wish to state.

MXOLISI DUKOANA
27·08·2019

MD

MD-SUP-227

"2DNS1"

Memorandum as to meeting with Mr Ace Magashule, the Premier of the Free State and other stakeholders on 17 September 2010 at Parys

1. **Background (provided by Marius de Villiers)**

1.1 Jagersfontein Developments (Pty) Ltd, hereinafter "JD", concluded a Sale of Assets - agreement with De Beers Consolidated Mines Ltd, hereinafter "DBCM", on 13 September 2010.

1.2 The assets included inter alia the mine dumps, prospecting rights and land situated at Jagersfontein. JD gave undertakings to DBCM inter alia, as to the community of Jagersfontein, a Community Trust, contributions to the Community Trust.

1.3 The Itumeleng Community CLNTrust was formed as there already existed a Jagersfontein Community Trust, which was established by one of the unsuccessful bidders to the initial disposal process followed by DBCM, being Wheatfields Investments No 168 (Pty) Ltd.

1.4 JD was invited by an official of DBCM, Mr Sakhile Ngcobo, to attend a meeting in Parys on 17 September 2010, with the then Premier of the Free State, Mr Ace Magashule. The meeting was a meeting with business stakeholders in the Free State Province, the province wherein Jagersfontein is situated.

1.5 Present at the meeting were:

Mr Ace Magashule – The Premier

Jan Botes – The Premier's office Advisor

Xolile Matwa – Mayor Kopanong Local Municipality

Audrey Tshvihandekano – Regional Manager – Department of Mineral Resources – Free State

Sakhile Ngcobo – DBCM

Rurik Gobel – JD

Chris Potgieter – JD

Chris Kimber – Superkolong

Nathiera Kimber – Superkolong

Marius de Villiers – JD

MD

Two other DBCM officials from Voorspoed Mine – names unknown

2. **Notes on Meeting (provided by Marius de Villiers)**

2.1 Mr Ngcobo from DBCM introduced the JD – party to the Premier, whereafter Mr Botes started explaining "Operation Hlasale" which was the Premier's project in the Free State Province for skills development, job creation and alleviation of poverty.

2.2 The DMR-Regional Manager indicated he will directly intervene and make sure that JD will be following the processes and assist the Community.

2.3 The Premier requested that there must be more provincial participation in the project.

2.4 JD indicated from their side that obviously this is a project still in its infancy, they have obligations to DBCM and community as per the agreement of Sale, but we will liaise with government, be it national or provincial, in the future.

2.5 The meeting adjourned late afternoon and DBCM officials with JD officials had a separate discussion of the meeting at another venue in Parys and had something to eat.

2.6 During this time Rurik Gobel got a call from Jan Botes, the Advisor to the Premier.

3. **Meeting and subsequent telephone discussions (provided by Rurik Gobel):**

We (myself, Chris Potgieter and Marius de Villiers) met Jan Botes for the first time in the parking lot of the municipal offices in Parys prior to the meeting, as the Premier was running late.

When the meeting commenced (about an hour or so later), the DBCM-representative, Sakhile Ngcobo, introduced the JD-team to the other attendees, as he initiated the meeting.

The purpose of the meeting was to introduce the JD-team and our potential BEE-partners (Chris Kimber and Nathiera Kimber from Superkolong) to the Premier's office and discuss future projects and initiatives to benefit the community of Jagersfontein.

It was a very positive meeting and the Premier himself also suggested certain projects and possible BEE-consortiums, if we needed additional BEE representation.

After the meeting was concluded, Jan Botes accompanied us to the parking lot where we were in conversation for quite some time re various community initiatives and

MD

opportunities, as it was my understanding (I stand to be corrected) that Jan Botes was heading up numerous such projects, including Operation Hlasale.

Afterwards we, the respective JD-representatives and Superkolong-team, left and walked to the Spur restaurant next to the Premier's office to sit and discuss our thoughts about the meeting.

Whilst sitting in the restaurant, I got a call from Jan Botes (all of us exchanged business cards at the meeting). He informed me that the Premier would also like to participate in the BEE-structure by taking up 4% of the shareholding. To the best of my recollection, the phone call was the first time that he mentioned the 4%. However it is possible that he already raised this topic while talking to me in the parking lot after the meeting with the premier, and that the telephone call was a follow up call. In any event, I responded that I would present it to the JD-board/Reinet to see if we could accommodate him within the current BEE-structure, but it would have to be based on the same terms as the other BEE-partners.

Jan Botes replied, in no uncertain terms, that the Premier expects to receive a 4% shareholding in the JD-project, in his personal capacity, without making any financial contribution whatsoever.

I was shocked and astounded by this blatant demand and told Jan Botes that we would never consider giving shares in the JD-project to any party for no compensation as this was not the way in which the group conducted their business. Jan Botes then asked me if I knew how powerful the Premier was and that he would advise us to strongly consider his "request". I told him again that under no circumstances will JD entertain anything that is not above-board, as this appeared to be, but I will relay his "request" to the other JD-representatives.

My immediate reaction was to tell Chris Potgieter about this very disturbing conversation I had just had with Jan Botes. Chris Potgieter was just as shocked and taken aback by these "demands" and agreed with me that Reinet would never participate in any such dealings or arrangements.

A few days later Jan Botes contacted me and informed me that the Premier no longer wished to participate in the JD-project.

MD

4. **Subsequent meetings (provided by Marius de Villiers):**

At a meeting in 2013 in Trompsburg, which was called by the Premier's office, with the municipality which Sipho Puwani and Marius de Villiers as trustees attended, it was stated by an official of the Premier's office that the local trustees must be appointed by them in conjunction with Municipality and community. We obviously disagreed.

5. **Conclusion (provided by Jason Eaglestone):**

JD has noted that evidence was given by a witness to the Zondo Commission of enquiry into Allegations of State Capture on 5 April 2019, that the witness had been informed by Mr Tony Gupta in a meeting where Mr Ace Magashule and Mr Duduzane Zuma were present, that Mr Magashule and Mr Zuma had received payments from the "Jagersfontein Mine".

JD confirms the following:

5.1 No payments were made to Mr Magashule OR Mr Zuma by JD, any of its associated companies or the Ithumeleng Community Trust; and

5.2 Neither Mr Magashule nor Mr Zuma at any time acquired or held an interest in JD or any of its associated companies, whether though holding shares or otherwise.

17 April 2019

MD

MD-SUP-231

"ZDMS 2"

From	igo@diamond-hill.co.za ▾ Edit identities
To	Edwin <edwinsodi@blackhead.co.za>
	Add Cc Add Bcc Add Reply-To Add Followup-To
Subject	Re: Fees Calculation

Editor type HTML ▾ Priority Normal ▾ Return receipt Delivery status notification Save sent message in Sent ▾

Font Family ▾ Font Sizes ▾

Sho Eddie,

I have effected the payments in 2 batches. Kindly find attached the updated schedule with the following minor adjustments:

JT from R1m to R500k

On 24 Mar 2015, at 3:23 PM, edwin <edwinsodi@blackhead.co.za> wrote:

Regards,
Edwin Sodi
Chief Executive Officer

Unit 9 | Block B
Willowbrook Office Park
Van Der Kloof Street

MD