

DISTRICT SIX REFERENCE GROUP

PART A

**TECHNICAL TEAM POSITION PAPER
ON RESTITUTION AND RELATED MATTERS**

28 JANUARY 2013

TABLE OF CONTENTS	PAGE
PART 1: EXECUTIVE SUMMARY	4
1. PURPOSE OF RG POSITION PAPER	4
2. MANDATE OF RG	4
3. CONTEXT FROM A RG PERSPECTIVE	5
4. SUMMARY OF RG RECOMMENDATIONS	6
4.1 RESTITUTION PROCESSES	6
4.2 FINAL DRAFT DEVELOPMENT FRAMEWORK (FDDF)	7
4.3 INFORMAL DRAFT BUSINESS PLAN (IDBP)	8
4.4 DRAFT MEMORANDUM OF INCORPORATION (MOI)	10
PART 2: HISTORICAL PERSPECTIVE AND CURRENT CONTEXT	11
1. BACKGROUND	11
2. CLAIMANT CHALLENGES	12
3. REFERENCE GROUP CHALLENGES	12
4. WHAT THE RG ACHIEVED	13
PART 3: DETAIL FINDINGS AND RECOMMENDATIONS OF THE RG	14
1. RESTITUTION PROCESS	14
1.1 KEY ISSUES	14
1.2 RECOMMENDATIONS	15
2. FINAL DRAFT DEVELOPMENT FRAMEWORK	16
2.1 KEY ISSUES	16
2.2 RECOMMENDATIONS	20
3. INFORMAL DRAFT BUSINESS PLAN (IDBP)	21
3.1 KEY ISSUES	21
3.2 RECOMMENDATIONS	22

4.	DRAFT MEMORANDUM OF INCORPORATION (MOI).....	23
4.1	KEY COMMENTS	24
4.2	RECOMMENDATIONS	29
	PART 4: CAPE PENINSULA UNIVERSITY OF TECHNOLOGY: (CPUT)	
	“HEART OF D6”: APPEAL FOR REVIEW	29
1.	INTRODUCTION	29
2.	THE KEY ISSUES	29
3.	RECOMMENDATIONS	30
	PART 5: CONCLUSION	31
1.	RESTITUTION FUNDING	31
1.1	KEY QUESTIONS	31
1.2	KEY ISSUES TO BE ADDRESSED	32
1.3	RECOMMENDATIONS	33
2.	RESPONSES TO THE QUESTIONS OF THE MINISTER	33
3.	INAUGERAL AGM AND SPV LAUNCH IN 2012	36
4.	EMPOWERMENT OF CLAIMANTS	36
	PART 6: ANNEXURES	38
	PART 7: REFERENCES	39

PART 1: EXECUTIVE SUMMARY

1. PURPOSE OF RG POSITION PAPER

The purpose of this position paper is to provide the Minister: Rural Development and Land Reform with the position of the Reference Group (herein after the **RG**) on the following matters it was requested to address, since its formation on the 30 September 2011:

- (i) Questions/concerns of the claimants;
- (ii) Questions of the Minister posed to the RG and District 6 Beneficiary and Development Trust (herein after the D6BT);
- (iii) The implementation of a Special Purpose Vehicle (SPV) to manage firstly the accelerated phases of housing construction for the claimants and secondly the exploitation of commercial opportunities;
- (iv) Making proposals related to the draft informal Business Plan (herein after the **BP**);
- (v) Making proposals related to the draft Memorandum of Incorporation (herein after the **MOI**);

2. MANDATE OF RG

- 2.1 Since its inception the RG sought clarity on the mandate it had to fulfil. In this regard the Department of Rural Development and Land Reform (herein after the Department) consistently tried to appease the RG that it had a “blank cheque” and that it could determine its own mandate based on the principle of “the centrality of the claimants”. This compelled the RG to take a step back to try and get a deeper understanding of what transpired during the more than 15 past years, before it could take a step forward. The Department emphasised that the RG could rely on the strategic support of the Department as there was a lot of institutional knowledge that had to be gathered from especially the D6BT and from officials of all three spheres of Government. Within this initial mandate the RG soon realised the enormity of the task it had to contend with.
- 2.2 Since its inception on the 30 September 2012 until 7 December 2012 the RG earnestly tried to make sense of the history of the very complex restitution processes that had played out since 1998 and in certain instances even before this date.
- 2.3 As things unfolded over time and all the pressures placed upon the RG to work within already decided time frames the RG became somewhat disillusioned that it could not operate as if a blank cheques existed, as certain decisions had already been taken even before the RG had been formed.
- 2.4 It only became very clear after the Minister met with the Social Integration Team on 7 December 2012 that the role of the RG **“to bounce information on – must provide assistance to department with tangible results – must bring back credibility”**

- 2.5 Although the research work done by the RG was of immense importance and valuable to engage with the various complex issues constructively, the RG holds the view that if the mandate of the RG was clearly defined from the onset, more substantial progress could have been made to submit deeper weighed and considered recommendations.
- 2.6 Given the overlapping inter-relatedness of the restitution and technical governance issues, many of the technical and social integration issues could not be adequately dealt with in isolation. It was challenging indeed for the RG to get a common understanding of the complex inter-related issues.
- 2.7 The RG also acknowledges that on many issues it had to contend with internal cohesion challenges and appreciated the support provided by the Department in this regard.

3. CONTEXT FROM A RG PERSPECTIVE

- 3.1 The RG initially faced various challenges to obtain background information related to the restitution processes. The information was provided on a piece meal basis that constrained the RG to obtain a coherent picture of transpired events. Being mindful of the expenditure of public finance the RG is cautious of making recommendations that is not fully in line with relevant Government statutes (Restitution of Land Rights Act, PFMA, and MFMA etc.) Missing this context will make the RG seem to lack an understanding of State governance processes and thereby nullifying their recommendations.
- 3.2 Similarly organs of State have to perform within the ambit of the relevant legislation to ensure that the restitution processes remain within the framework of the law and that full compliance is observed to avoid any possible legal challenges from aggrieved parties.
- 3.3 The more than 15 years inordinate delays/struggle to reconstitute the claimants of D6 cannot be placed at the door of the claimants of D6. The D6BT who conducted the restitution proceedings in this regard, in conjunction with the Department, were not acting transparently and succeeded in becoming a referee and player in the development process of D6 for Pilot Housing Phases 1 and 2. The very slow finalisation of restitution processes to enable the claimants to return to D6 resulted in most of the claimants becoming disillusioned and began to lose their confidence in the D6BT. Hence the need for and formation of the RG to bring back credibility.

4. SUMMARY OF RG RECOMMENDATIONS

After analysing the documentation made available to the RG, presentation sessions and engagements with interested stakeholders and verbal information provided the following summary proposals are submitted under relevant headings:

4.1 RESTITUTION PROCESSES

4.1.1 KEY ISSUES

- (a) The RG made a detailed analysis of the numerous questions posed by the claimants over many years for which definitive answers were not

generally forthcoming in very clear terms. In engagements in which even the RG found itself there was much obfuscation and beating about the bush where a clear question required a clear answer. Part of the daunting challenge of the RG is to further seek clarification on salient claimant questions to bring about a greater degree of certainty in the hearts of claimants. The claimant questions have been prioritised in the following categories:

- Restitution process questions
 - Types and design of houses
 - Land questions
 - Land/house allocation questions
 - High density questions
 - Cost of houses and financing
 - D6BT questions
 - Business questions
- (b) Having interrogated the claimant questions it became evident that on the salient questions of restitution process issues and the question of a D6 Land Audit remain elusive.
- (c) A serious burning issue among claimants is the undeveloped and developed residential and retail/commercial land that has been sold off after the date it was re-declared an area for restitution of land rights to persons forcibly removed under the Group Areas Act. In this regard the department, given that the original 150 hectares of land has shrunk to less than a third (40.4 hectares) of its original quantum, should seriously consider the option of the possible expropriation of land or the acquiring of alternative land as provided for in the Act. The RG, for humane reasons, would support the latter as a first option. The properties in point are, inter alia, the Bloemhof Flats, Drury Lane Flats, Stirling Flats, and Eaton Place amongst others. The acquired land should be utilised for claimants as well as for former residents of D6 who either claimed too late or not at all and who still wish to rent in D6.
- (d) The RG also appreciates that the Department is currently in transition and is faced with internal capacity challenges to address these questions. However, if these questions are not pro-actively resolved it holds serious implications for the unfolding of the rest of the development processes.

4.1.2 RECOMMENDATIONS

The following recommendations in respect of the most critical issues are submitted:

- (a) The validation of all claimants be finalised by the Department as a matter of extreme urgency, given that the closing date for the submission of claims expired on 31 December 1998.
- (b) The existing disparity of two different Restitution Settlement Agreements of the Department is rectified as a matter of extreme urgency to bring the restitution processes fully within the framework of

the Restitution of Land Rights Act (Act 22/1994) (herein after the Act). Copies of the two types of settlement agreements are attached as Annexure 5.1 and Annexure 5.2 respectively.

- (c) That written confirmation be issued to Claimants that their claims have been validated and approved.
- (d) That the claimant lists (tenants and property owners) data be cleansed as these lists could be critical for the establishment of a Special Purpose Entity when election of claimant board members must take place.
- (e) That the Section 42D Framework Agreement be annulled by the Department to bring all restitution processes within the ambit of the Act. Paragraph 3 of this Agreement only provide for the settlement of Tenant claims and that owner claims still need to be addressed.
- (f) The D6 Land Audit be finalised to identify undeveloped and developed residential and retail/commercial land that has been sold off after the date it was re-declared an area for restitution of land rights to persons forcibly removed under the Group Areas Act.
- (g) The option of acquiring of alternative land for restitution purposes should be explored to increase the quantum of land for restitution purposes and the integrated development of D6.
- (h) That a complete list of all claimants' allocated dwellings in Pilot Phases One and Two be provided to update the current Claimant Lists.
- (i) That the D6BT, as the developers of the completed Pilot Phase 2, provide full accountability reports given that public monies were spend on this project.

4.2 FINAL DRAFT DEVELOPMENT FRAMEWORK (FDDF)

4.2.1 KEY ISSUES

- (a) Based on one of the main principles of the FDDF Report, the initial brief to Target Projects and its subsidiary contractors (Lucien Le Grange et al) was that provision must be made to accommodate a total of 6500 units on the remaining vacant erven in D6. Given the reduced available land this total was subsequently changed to 5000 units.
- (b) It is categorically stated that this brief was never brought to the attention of the majority of claimants nor was the rationale for such a fundamental principle that impacts directly on the restitution of land rights of claimants constructively discussed with them.
- (c) The equitable restitution of the land rights of the claimants of D6 is directly linked to the amount of land currently available for restitution purposes. Given that out of the original 150 hectares, only about 34 hectares (minus about 10 hectares for utilisation of public open spaces and other amenities) are available for restitution purposes. To

try and squeeze 5000 units in this significantly reduced restitution land is to add insult to injury that the people of D6 endured and asking now of them to endure all over again under the guise of "acceptable densities" and "modern town planning".

- (d) Besides a very few medium density (double storey) buildings, most of the housing units were attached single dwellings, duplexes and many single houses. These units were interspersed within D6.
- (e) To attempt to modernised D6 with words in a FDDF report that strives to support a BP with a pre-meditated motive to place business interest before the restitution of land rights of claimants, and thereby intending to erect high-rise density dwellings, which the claimants reject, is asking of the claimants to return to a D6 that never existed. To try and give a semblance of D6 by erecting a few facades at some strategic places is to totally ignore the deep emotional bonds that the claimants have of their birth place and the true and real heritage that they want the world to experience when D6 has been redeveloped according to the claimants needs. The following proposal contained under the heading **HOUSING FORM & IDENTITY** in the FDDF Report is indicative of the seemingly low regard demonstrated towards the claimants by the authors of the report – "**Consideration should be given to the limited allowance for the occupants' identity in the design of housing facades/edges that interface directly with the public realm**".
- (f) As a point of principle the claimants of D6 would want nothing less than the same for others as it reclaims its restitution in land rights.

4.2.2 RECOMMENDATIONS

- (a) That not more than 2800 single and/or duplex units for residential purposes be erected in the final phases of the redevelopment process given the greatly reduced available land for residential purposes;
- (b) That the average residential plot sizes should not be less than 210 sq. metres;

4.3 INFORMAL DRAFT BUSINESS PLAN (IDBP)

4.3.1 A FALSE PREMISE

- (a) It is a false premise to hold a dangling carrot to claimants of how valuable the land of their birth is and to view this as an extra-ordinary asset. Had the people of D6 not been forcibly removed, they will still be living on their rich asset without a blink of an eye, as their homes would have been passed on from one generation to another. All that the claimants decry is to return to their home called D6 and not how much the land they will be living on is worth. This is not too much to ask after all the pain and suffering the claimants had to endure.
- (b) "Gentrification" is another word that has been used to inculcate fear and uncertainty in the hearts and minds of the claimants. There is a "Big Brother" who knows what is best for "the smaller and less

educated brothers" who it is assumed do not have a grasp of the world they are living in. The assumption that the latter will not be able to cope with the ruthlessness of business mongols that will be offering them peanuts for their rich assets is so unfortunate and disrespectful. Are we still living in the dark ages where the few decided what is best for the many and that they need protection? The people of D6 are old and wise enough to take care of their own well-being.

4.3.2 KEY ISSUES

Claimant Concerns

Given that the FDDF was developed and formulated to support a proposed BP that has primary focus the development of business interest and the restitution of claimants as a secondary issue, the following claimant concerns and viewpoints of the claimants are submitted by the RG –

The following are amongst the issues raised by the plenary when RG were elected:

- (a) The "price" pensioners are expected to pay for their restitution home;
- (b) The lack of rental units or clarity offered in terms of offering rental units to those that were unable to "afford" to buy a home in District 6;
- (c) How would older /indigent claimants access units situated on higher floors;
- (d) What about the single or duplex terrace houses that was such an integral part of district six;
- (e) What about the empowerment of the claimant community with building contracts given their historical and current trade expertise in the construction industry;
- (f) The presentation to the plenary was far from sufficient in its consideration of the individual needs of the claimants. However the RG understand and support the need of a business plan to roll out a complete and successful development that would see all stakeholders meet their obligations in terms of:
 - settling the claimants
 - meet their integrated and other housing obligations
 - developing a prized piece of real estate in the City
 - Completing a presidential mandate.
- (g) The RG is holds the viewpoint that the order of obligations should be in favour of the claimants and that the principle of the "centrality of the claimants" should be a fact and not a byword for any other ulterior motive(s).

- (h) With this foremost in mind, the RG suggest that the many voids that currently exist in the business plan should be completed not only by the professional teams that would be contracted by government, but also by the claimant community representative body, currently in the form of the RG. Failing to do this would once again see the claimants being side-lined as was the case prior to the formation of the RG.

4.3.3 RECOMMENDATION

In the absence of more detail information in respect of the specific business interest to be pursued and a detail business risk assessment to determine the viability of a sustainable business venture the RG recommends that the acquiring, holding and development of claimant restitution land be excluded from the transfer of "ALL land" to an envisaged Business Entity.

4.4 DRAFT MEMORANDUM OF INCORPORATION (MOI)

4.4.1 KEY ISSUES RELATED TO THE ENVISAGED TYPE OF MANAGEMENT ENTITY (SPV)

In terms of subsection (5) of Section 42C of the Restitution of Land Rights Act, (Act No 22/1994), as amended, the Minister may in writing for the purposes of the development of land contemplated in subsection 42C(1) transfer funds contemplated in that subsection to any organ of state. This legal stipulation makes it very clear that public funds for development purposes cannot be transferred to non-organs of state. Furthermore subsection (3) of Section 42C lays down the various tiers of Government to which the powers of the Minister under subsection (1) of Section 42C can be delegated. This legal stipulations consequently gives clear direction to the type of agency/vehicle the transfer of public monies can be transferred to "*... for the development or management of, or to facilitate the settlement of persons on, land that ...is subject of ... an agreement in terms of section 42D ...*"

4.4.2 RECOMMENDATIONS

- (a) In the absence of more detail information in respect of the specific business interest to be pursued and a detail business risk assessment to determine the viability of a sustainable business venture the RG recommends that a non-profit company be established to manage and oversee the structural development of the accelerated phases that will ensure that the claimants return to D6 by 2014. This recommendation will also ensure that public financial expenditure remain within the framework of the PFMA.
- (b) RG submit that in setting up of a special vehicle to manage and oversee the redevelopment of D6 that the role of existing organs of State at the Provincial or Local level be explored to undertake the management of the residential housing redevelopment of D6.
- (c) The pre-emptive right to re-sell shares should not be encumbered by a lock-in period. The market should determine when shareholders wish to dispose of their shares. This clause militates against free market principles and places a restriction on the rights of shareholders to trade with their investment. There should be no restrictions.

- (d) Business/Legal expert(s) to be made available to advise RG on the working of the system of shares and other related issues contained in the MOI before full endorsement can be given by claimants.

PART 2: HISTORICAL PERSPECTIVE AND CURRENT CONTEXT

1. BACKGROUND

- (a) The many challenges attached to the restitution process of D6 and the resultant inordinate delays to finalise the resettlement of claimants saw the direct intervention of the State President, Mr Jacob Zuma and Minister of Rural Development and Land Reform, Mr GE Nkwinti. Two general meetings were convened by the Minister for all claimants on 19 July 2012 and 1 September 2012 where constructive engagements took place. Flowing from the Ministerial meetings two claimant groups were elected by the broad body of claimants to represent them in a –
- Technical Team; and
 - Social Integration Team
- (b) The 2 teams constitute the RG.
- (c) The form and shape of a “Special Purpose Vehicle” that has been proposed to drive the restitution process should still be determined.
- (d) The RG had to contend with many challenges and frustrations given time constraints and the magnitude of the task at hand. The RG soon came to the realization that a clean slate option was not possible to address all the dissatisfactions emanating from the past given the pre-determined time-frames to interrogate the proposed BP, SPV and MOI.
- (e) Announcement of a Launch and AGM exerted even more pressure and in many respects posed severe constraints on the ability of the RG to deliver as originally intended.
- (f) Nevertheless the RG believes that we have a responsibility as democratically elected representatives to be answerable to our claimants and so in the spirit of honesty, transparency and accountability we have been meeting up to three times a week to produce this position paper.
- (g) This position paper has identified the key priority focus areas related to the Technical as well as the Social Integration aspects and were deliberated on by the respective task teams. We have tried to outline the issues in context along with the opportunities and challenges and then we deliberated extensively to see how best we could serve and improve what would be in the best interest of the claimants. We now have made clear recommendations for each focus area and we believe that when adopted and incorporated would enhance the development proposals.
- (h) During all of its deliberations the group was constantly mindful of the centrality of the claimants and to understand and hold their needs and

requirements as the primary focus point. The group acknowledges that the restitution process of D6 is highly emotive for the claimants as all of us comes from the ranks of the claimant body and can identify in a very sincere manner with their fears, hopes and aspiration for the D6 that they wish to redevelop. We also understand the compassion that is needed to heal the deep wounds and scars that they bear and that are indelible ingrained in their souls as we also bear those wounds and scars within our souls.

2. D6 CLAIMANT CHALLENGES

After analysing the questions/concerns of the claimants the following are some of the major challenges high-lighted by claimants:

- (a) Claimants need written confirmation that all claims have been validated and approved;
- (b) Resolution of the Property Owners and Traders restitution claims;
- (c) The validity of the Individual Restitution Settlement Agreement entered into between the DRDLR (formerly Dept. of Land Affairs) and the claimant;
- (d) The selling of restitution housing units by the D6BT by means of a sale agreement titled a "Memorandum of Disposal" and the legality thereof;
- (e) The type (design) and size of residential dwellings;
- (f) The issue of LRB's (late claimants) which remains a burning issue;
- (g) Lack of regular communication with claimants on restitution matters.

3. REFERENCE GROUP CHALLENGES

- (a) The inaugural meeting of the two teams were held on 3 September 2012. It was clearly stated that the teams had been given a "blank cheque" and had to develop their terms of reference as a group. What was needed "are people that will enhance and assist the restitution process". The proposals contained in the proposed Development Framework Report and draft Business Plan (the formal report has not as yet been submitted) is not final. The teams needed to focus on what they want to do and should concentrate on what the governance issues are and how does the groups link with the Department. Furthermore the teams should deliberate on how they want to resolve the D6 issues given the urgency of the matter. The two teams are central to the development of D6 as it is regarded as the "core". It became clear from this meeting that the emotional wounds of the claimants run deep and that a need for a healing process is evident.
- (b) The teams were very fragile at the outset and needed time to develop into knitted units and as a group in the main. The support of the Department until now has proved invaluable and the separate groups

have reached the stage where they have become strong enough to do many things on their own. The group realise and acknowledge that the strategic and logistical support of the Department is still required given their dependence on the resources required to enable them to function effectively.

- (c) Since its inception the Technical Team has held 15 formal meetings. Beside these meetings the two teams also convened 14 additional meetings on Wednesdays, including a full day work session on 19 December 2012.
- (d) The group struggled initially to obtain the relevant historical restitution documentation (various agreements, Development Framework Reports etc.) that did not make it easy to obtain a coherent picture of what transpired previously, make sense of it and how it all fits together. The group was ever mindful of the time constraints and pressures being brought to bear and to come up with tangible deliverables. It became quite evident that before the group could make any significant progress and be fully forward looking, they needed to take a step back to obtain a full understanding of what really transpired in the past that gave rise to the highly complex and interwoven unfinished painting they are being asked to assist to complete. This daunting challenge seems not to be an easy one together with the perception of the high expectation placed on them to come up with feasible solutions and/or alternatives over a very short period of time. Whilst the group realises the great urgency to finalise the restitution of D6, it would be an unreasonable expectation to provide solutions or feasible alternatives that could not be found and/or implemented in the foregoing 15 years. In spite of these challenges the group remains positive and confident to make tangible contributions to the resolution of current restitution challenges.

4. WHAT THE RG ACHIEVED

- (a) The group inter-actively engaged Target Projects on 6, 13 and 19 October 2012 to get a fuller understanding of the underlying principles and issues that gave rise to the options/recommendations contained in the proposed Development Framework and Business Plan.
- (b) On the 3 November 2012 the RG had its first meeting with the broad claimant community in the CTICC. This meeting is regarded as a first success for the RG as the claimants endorsed the direction in which the RG is moving. In the words of more than one claimant the spirit of D6 has been rekindled in them.
- (c) After the aforementioned meeting, the RG met with the D6BT on the 12 November 2012 in an attempt to foster more cordial relations given the vast institutional memory that resides within the D6BT office bearers. As this was a first engagement of the parties it can at best be described as setting the scene for further more constructive engagements. At the end of this session the Minister posed the following questions to both parties for a response:

1. **When are the claimants getting back to District 6, and how?**
2. **What will it take to achieve that?**
3. **Who plays what role in that regard?**

The context within which these questions are answered is –

- (i) the centrality of the claimants; and,**
- (ii) the strategic support to be given to them by government and the D6 Trust**

In other words, this joint effort is meant to facilitate the work of the RG, in its effort to carry out the mandate given to it by the claimants, especially during the last two plenaries.

The response of the RG on these questions is set out in the conclusion of this Position Paper.

- (d) Furthermore two representatives of the RG were formally co-opted onto the Technical Steering Committee of the Department and two representatives of the RG were appointed to be incorporated onto the national RG forum. This demonstrates the confidence that the RG has established since its formation.
- (e) The RG is also working in partnership with the Department to assist in the updating of the claimant lists (Tenants and Property Owners/Traders) and the D6 Website configuration. The first formal engagement in this regard will take place early in January 2013 when officials of the Department have returned from vacation.

PART 3: DETAIL FINDINGS AND RECOMMENDATIONS OF THE RG

1. RESTITUTION PROCESS

1.1 KEY ISSUES

1.1.1 SECTION 42D FRAMEWORK AGREEMENT: DUAL ROLE OF D6BT

- (a) The Section 42D Framework Agreement and subsequent agreements that flowed from it placed the D6BT into a position where it became both a referee and player in the redevelopment processes of D6. The depiction of the current restitution processes is illustrated in **Annexure 5.3** of this Position Paper.
- (c) Given the lack of transparency by the D6BT, who appears to remain in default of their own Trust Deed by not holding consistent Annual General Meetings, the claimant community at large became disillusioned and lost confidence in the D6BT. By also not making their Financial Statements regularly available to the claimant community they purport to serve, created suspicion and rumour mongering that all was not well in the house of Rome. This is a very strong perception based on rumour that still persists. Only full disclosure of the affairs of the

D6BT will be able to dispel this perception among the majority of the claimants.

- (d) The most detested secondary agreement that touches on the heart of the restitution process, is the so-called "Disposal Agreement (Sale Agreement)" that enforces the sale of the restitution dwellings to the tune of R250 000 with its concomitant unlawful "Social Compact" that the D6BT enforces claimants to sign if they wish to obtain their restitution in Land Rights.
- (e) General consensus prevails that past restitution practices have led to this current untenable situation that provided the D6BT with powers that are not wholly within the framework of the Act. This situation is no longer sustainable if the return of the claimant community has to materialise by 2014.
- (f) It is incumbent upon the Department to rectify this anomalous situation expediently to bring the restitution processes fully within the compliant legal framework to prevent any possible litigation by claimants. The verbal assurances that the Department is dealing with the matter circumspectly, given the sensitivity of the circumstances, can be appreciated but given the long history of this matter, necessitates more tangible outcomes. It is of critical importance that the current restitution practices are not carried over into the major accelerated phases.
- (g) The occupation of the many empty dwellings serves as an indictment against the Department particularly and the D6BT specifically, that make the burden of D6 claimants who wish to return even heavier. Classical recent cases in point that demonstrates clearly the dual role of the D6BT is that of Anwar Botha and Asa Salie.
- (h) The empty dwellings can be construed as wasteful public expenditure on the one hand and inhumane, if not criminal, on the other hand, that allows legitimate claimants to endure a restitution process that infringes on their human rights (to be treated with dignity and respect).
- (i) Many of the current claimants who are occupying dwellings for over a year and have settled their R250 000 payments in full, have not received their title deeds. The impediment seems to be the pre-requisite to issue "Occupancy Certificates" by the CoCT before transfer of property can be effected. Furthermore these owners have been informed by the D6BT conveyancing attorneys that their dwellings are not insured and that they must attend to it themselves which they are unable to do because of the lack of title deeds.

1.1.2 RECOMMENDATIONS

- (a) The validation of all claimants be finalised by the Department as a matter of extreme urgency, given that the closing date for the submission of claims expired on 31 December 1998.
- (b) The existing disparity of two different Restitution Settlement Agreements of the Department is rectified as a matter of extreme urgency to bring

the restitution processes fully within the framework of the Restitution of Land Rights Act (Act 22/1994) (herein after the Act). **Copies of the two types of settlement agreements are attached as Annexure 5.1 and Annexure 5.2** respectively.

- (c) That written confirmation be issued to Claimants that their claims have been validated approved.
- (d) That the claimant lists (tenants and property owners) data be cleansed as these lists are critical for the establishment of a Special Purpose Entity when election of claimant board members must take place.
- (e) That the Section 42D Framework Agreement be annulled by the Department to bring all restitution processes within the ambit of the Act. In terms of paragraph 3 of this Agreement only provide for the settlement of Tenant claims and that owner claims still need to be addressed.
- (f) The D6 Land Audit be finalised to identify undeveloped and developed residential and retail/commercial land that has been sold off after the date it was re-declared an area for restitution of land rights to persons forcibly removed under the Group Areas Act.
- (g) That a complete list of all claimants' allocated dwellings in Pilot Phases One and Two be provided to updated the current Claimant Lists.
- (h) That the D6BT, as the developers of the completed Pilot Phase 2, provide full accountability reports given that public monies were spend on this project.

2. PROPOSED FINAL DRAFT DEVELOPMENT FRAMEWORK

2.1 KEY ISSUES RELATED TO SPATIAL DEVELOPMENT CONSIDERATIONS

On Saturday, 08 December 2012 the RG held an all-day spatial design workshop to develop a broad vision and design principles to underpin the redevelopment of District Six. The following broad vision and design principles were recommended, subject to general acceptance of the broad claimant community.

4.1.1 BROAD VISION

- (a) District Six must conceptually reflect the past but be innovative;
- (b) The street fabric of the past is desirable for District Six;
- (c) Spaces that capture the wholesome experience that District Six was must be provided so that the shared heritage of the past can be expressed collectively through singing, poetry and so on;
- (d) It is important to acknowledge the older people who have passed on while waiting to move back to District Six; and move forward with speed to get people back to the area;

- (e) The redevelopment of District is like creating a living monument and must therefore embrace the vibrancy that it had before;
- (f) The design must not be done in great haste but with care and holistic planning to allow views and other special aspects to feature as part of the new design;
- (g) Revisit building plans that have been approved and understand where the comments made by some of the members derive from in respect of the Pilot phases;
- (h) The redevelopment of District Six is also the realisation of many people who did not claim - leftover land should therefore be shared with their off-spring.

2.1.2 DESIGN PRINCIPLES

(a) New Hanover Street

- (1) The vision for the current Keizergracht is that of an urban corridor that resembles the original urban activity corridor at the time known as Hanover Street which had a particular vibrancy.
- (2) The corridor is to encourage a mix of uses with retail on the ground plus two storeys of residential living above the retail.
- (3) Densities and heights may increase towards the city centre.

(b) House Design Principles

- (1) The style of the new homes is to be similar in size and scale to what the original residential fabric was in District Six.
- (2) As far as possible, claimants' views must be respected in the design of the new scheme.
- (3) Special provision in the design must be made for the indigent (older people and those with special needs).
- (4) It is recognised that the younger off spring may have different requirements in respect of their accommodation needs which must be understood in the design of the new residential units.
- (5) Ideally livelihood spaces should be attached to the new home that claimants will be occupying; however, given zoning restrictions in respect of allowing claimants to conduct businesses from home, provision should be made for a market space in the redevelopment plan where goods made at home, can be traded.
- (6) While every claimant household must have a single parking bay, it is acknowledged that the parking bay may not be in the form of a garage attached to the house given that it may not be possible to

provide a garage for every single household against the physical constraints on the land.

- (7) The circulation of the house must be based on best practice in respect of accessibility for internal human movement. In this regard, staircases must have a steady rise with generous landings to allow occupants to pass each other and ensure their safety.
- (8) Balustrade design must allow for furniture to be moved with ease.
- (9) The colour of the new homes must be decided by the returning claimants and will not necessarily be white which gets dirty easily. A good quality paint that is washable is more desirable.
- (10) The stoep is desirable as an element that sets the front facade back from the street to ensure privacy and serve as a threshold space between the street (public space) and the house (private space).
- (11) The new house must have the following minimum requirements:
 - not less than 90m²
 - three bedrooms
 - two bathrooms; and
 - Living area.
- (12) The scale of the new residential unit must be proportionate to what claimants who have already moved into District Six, have now (Pilot Phases 1 and 2). However, the design of the new home must allow **for flexibility and adaptability from the basic 90m² to permit the new household to extend their homes over time.**
(NB: To be clarified with the Dept. – Kelvin Naidoo)
- (13) While security is important it should be designed as humanely as possible.
- (14) The box type white units currently part of Pilot 1 & 2 as a design façade is not to be pursued as the norm for the remaining phases of D6. Instead the designs should be a mixture of designs that embraces the character of the old with sufficient creative variation for a modern city precinct. There are already existing examples of this variation in District Six.

(c) Holistic Redevelopment of Land Area

- (1) The design of homes may proceed on land appropriately and correctly zoned to accommodate the next phases of residential development for claimants in order to commence with building works as soon as possible.
- (2) It is acceptable to leverage the land asset **(after claimants have been made provision for)** to cross-subsidize the new homes and their extensions over time through utilising the remainder of the land

commercially which will allow a range of uses to be developed in District Six; and a range of people to return.

- (3) Even though it was agreed that the land appropriately zoned would be constructed first in the interest of progress, **an integrated plan** for the entire redevelopment area must be formulated so that the vision is always clear and pockets of development are spatially expressed in terms of this holistic vision.

2.1.3 KEY ISSUES RELATED TO SPECIFIC HOUSING NEEDS OF INDIVIDUALS

- (a) The development framework and business plan speaks of a specific plan that may in its entirety paint a picture of a socially integrated community. This however may not hold true when you expect the claimant community to come back to D6. The community is made up of individuals that have different needs. The RG believe that should this not be addressed and considered, it will see a development with many claimants having no option but to become absentee landlords, leasing out the homes that should have, but don't meet their specific needs and this would create a totally different type of community.
- (b) In meeting with Target, the RG were assured that there is many "Options", none of which were explained, and the RG can only draw the conclusion that some of these plans were still to be formulated by the "SPV" when it is established.
- (c) Given that fact that this is an individual Land claim, most claimants were initially under the impression that they would be furnished a small plot of land with hopefully a plan and definitely a title deed securing ownership thereof.
- (d) The "new Offer" should be stepped in such a way to take into consideration a variety of factors including the needs of larger families, financial capabilities and opportunity for some to build their own homes within the boundaries of the development framework.
- (e) There should be a minimum settlement, without any cash or payment requirement from the claimant, thereafter there should be a systematic increase in (Land / house) offer as the contribution by the claimant increase.

2.1.4 KEY ISSUES RELATED TO CONSTRUCTION COSTS

- (a) Of specific interest to the RG is the disparity in construction cost mentioned by different parties. Based on first-hand knowledge of construction costs and during the RG deliberations with Target, the RG were given a construction cost of R 4700 00 per m², and then again by an official of the Department, a figure of R 8000 per m². Having had an

opportunity to inspect the units build in pilot phase 1 and 2 , it is the RG's viewpoint that a reasonable construction cost of R 5000,00 per m² is acceptable that should ensure quality of work and finishes.

- (b) That would comfortably bring the cost of a 90 m² unit to about R 450 000, 00, making the construction of 1555 houses from the R 700 million budget possible.
- (c) Considering the fact that so many of the claimants is in the construction field and given our historical background as a community, many of our uncles, cousins and brothers are builders or artisans. Assuming that the claimant community is naïve to these calculations would be naïve in itself.
- (d) In a development such as this, the opportunity for cost escalation (corruption) is generally funnelled through exorbitant construction costs. Open and transparent dealing in the next building phases will be critical for the respect and survival of the Restitution Management Company.

2.1.5 RECOMMENDATIONS

- (a) Firstly, that the transfer of claimant restitution land for residential purposes should not in any manner form part of restitution land that may be earmarked for transfer to a special D6 Management Entity (SPV) for commercial and/or business exploitation (Section 42A(1) of the Act). Since this is a restitution issue it is furthermore recommended that the payment of R225.000.00 be divorced from the restitution of land rights of claimants. The option to invest as shareholders must be treated as a separate issue;
- (b) Secondly that not more than 2800 single and/or duplex units for residential purposes be erected in the final phases of the redevelopment process given the greatly reduced available land for residential purposes. It is submitted that the unmandated brief of 5000 units on which the "preferred option" (Option 2) as contained in the proposed FDDF and BP is founded, is strongly rejected by the majority of claimants based on the reduced available land for residential development;
- (c) Thirdly, that the dwellings that will be erected in the final phases should reflect the true heritage and characteristics of houses that existed in D6 and with which the claimants can identify. The argument that is being proffered that D6 cannot be the same again, is another false argument as this is to underestimate the resilience and exceptionally strong bonds that existed and still exists within the claimant community. It was heartening to hear at the Ministerial meeting of 3 November 2012, that more than once claimants reiterated that the spirit of D6 has been rekindled. The coming together of the RG also demonstrates the unity of purpose to make D6, **not exactly**, but as near to what it used to be to reflect D6 as a monument of which our descendants can be proud. The final redevelopment phases should naturally blend in with the few

remaining dwellings that were not demolished in, for example, erstwhile Upper Ashley Street.

- (d) Fourthly, that the average plots should be at least 210 metres that leaves room for future expansion in terms of the design principle of flexibility.
- (e) Fifthly, that the payment of R225, 000 (of which R180, 000 buys the restitution house and R45, 000 buys company shares), for the restitution dwelling and buying of shares is rejected as this is not in line with the Restitution of Land Rights Act.

5. INFORMAL DRAFT BUSINESS PLAN

5.1 THE KEY ISSUES RELATED TO THE PAYMENT OF R225, 000

3.1.1 Overview

The Claimants appear to be generally satisfied with the Business Plan development aspects but the following issues have become a problem and a serious concern:

- (a) The Claimants are unhappy that they have to be paying a contribution of R225, 000 to the cost of their houses as it goes against the spirit of Restitution.
- (b) Many claimants, especially the elderly, are frantic about how and where to find such a large sum of money. Banks would not underwrite these loans to seniors.
- (c) To expect claimant families to source funding is problematic and can cause family strife and tensions which goes against the spirit of restitution.
- (d) A further complication factor is that the Business Plan sows confusion by allowing options of “ what if you cannot contribute but want to” and then “what happens if you do not want to contribute” and then concludes by “ threatening” that
- (e) The Plan will only work if 80% of claimants contribute.
- (f) The RG acknowledges the work done by Target Projects in preparing the Proposed Business Plan based on a prescribed brief and is grateful for the positive interaction with Target in sharing their expertise in helping the RG to come to grips with complex issues in the Plan, given the limited time available to the RG. The RG wishes to put on record that our commentary and recommendations in this report have been restricted to options presented in the proposed Business Plan. The RG strongly believes that if the brief to Target had been different then the options presented could have been quite different and perhaps improved options could have emerged. The RG has not had sight of the complete Business Plan narrative so our inputs are based on presentations and interactions with Target.

3.1.2 Outline of business plan options

- (a) The plan is premised on the historical 1998 Record of understanding with The Department of Land Affairs, the City of Cape Town and the District Six Development Trust who formulated a Vision and Mission for District Six. The Business Plan was based on the claimants becoming part of a Development Company that would oversee and manage the entire District Six Development. Claimants would decide on the Constitution of the Company and claimants would be asked to make a contribution.
- (b) The Business Plan then carefully explored a number of options where for each option the merits along with the challenges and problems were comparatively analysed. The Business Plan also gave breakdowns of cost structures and how the funding avenues impacted on the cost of the Project. Option 7 was recommended by Target as the most viable option

3.1.3 “Preferred” Option 7

- (a) Option 7 had the most positive implications as the vision of District 6 could be retained in an accelerated option through a R700 million Government contribution that would enable construction of houses to be fast tracked and ensure that claimants could be back within three years.
- (b) This option also allowed for the creation of additional homes for LRB's, Gap and social housing in line with the vision to create and integrated and multiracial community. The “contribution/ payment” of equity by claimants would grow in value allowing the SPV to develop the commercial potential and in turn more gap and social housing.

3.1.4 RECOMMENDATIONS ON CLAIMANT MAKING PAYMENTS

The RG has considered all the implications and concludes that the way in which Option 7 is motivated is fundamentally flawed but the RG believes that the same financial targets can be achieved and even improved and therefore make the following recommendations.

- (a) The Restitution of claimants should not be linked at all to the payment of contributions to the cost of their houses.
- (b) Restitution should be dealt with as a separate issue in line with the appropriate legislation.
- (c) Claimants have originally in writing agreed to be part of the development of District Six as the option chosen long before the Business Plan.
- (d) Claimants should be encouraged to buy shares in the development with all the down-stream benefits as stated in the Business Plan.

- (e) Purchasing of shares should be structured to give claimants options to make monthly contributions toward a share option where the range of increasing share options is demonstrated with dividend projections over time. The principle should be similar to taking out unit trusts which is a form of taking up shares being managed by financial institutions.
- (f) Such a fund would be invested in a Trust Fund via the SPV through a financial institution.
- (g) This change in marketing strategy, if correctly motivated, should solicit a more positive response from claimants and 100% will buy-in because the options would vary and would be flexible on contribution amounts.
- (h) This approach would generate funds immediately with interest and would improve the overall cash flow of the roll-out as previously the payment of R225 000 was linked and payable only on transfer.

3.1.5 FURTHER RECOMMENDATIONS ON THE BP

- (a) That the transfer of claimants' restitution land for residential purposes should not in any manner form part of restitution land that may be earmarked for transfer to a SPV for commercial and/or business purposes;
- (b) That claimants should be free to acquire shares, as and when they have the financial means to do so;
- (c) Based on the legal provisions as set out in Section 42A (1) of the Restitution and Land Rights Act the RG submit that in setting up of a SPV to manage and oversee the redevelopment of D6, the role of existing organs of State at the Provincial or Local level be explored to undertake the management of the residential housing redevelopment of D6 or a NPO be established for this purpose. The existing organs of state have the requisite infrastructure and expertise to ensure the delivery of the redevelopment outcomes that will make it possible for all the claimants to return to D6 by 2014. The setting up of a NPO, given the magnitude of the project to be completed, will experience growing pains that can cause delays. The CoCT, the current custodians of the D6 land, are legally positioned to facilitate the effective transfer of the land to all the individual claimants in accordance with the Act.
- (d) The remainder of the D6 restitution land that is earmarked for possible commercialisation/business purposes could be transferred to the SPV that can sustain the on-going socio-economic growth and development of the D6 and broader Cape Town community.

4. DRAFT MEMORANDUM OF INCORPORATION (SETTING UP OF THE "SPV")

4.1 INTRODUCTION

As the RG, when reviewing the draft MOI, did not have the privilege of legal assistance given the highly legal technical nature of the document, the comments/inputs/recommendations that the RG submits are that from a layman's perspective. The draft MOI was dealt with clause by clause and

comments/inputs has been included as “sticky notes”. **Annexure 5.3** contains the inputs of the RG.

4.2 KEY COMMENTS

INTERPRETATIONS

“Share”

There are different types of shares that will be made known as soon as the company are up and running. The value of the shares is a nett equity value in any given point in time.

INTRODUCTION

Clause 2.1

- Clarify this clause within the context of the Restitution of Land Rights Act.
- D6 restitution land for settlement of claimants land rights must be de-linked from the land earmarked for commercial exploitation

Clause 2.2

- Is it all property (40.4 hectares?)
- Delete D6BT

Clause 2.6

- Integrated Development
- Principles:
 - Treat all claimants fairly i.t.o restitution processes irrespective of colour or creed
 - Non-racial community
 - Reduced quantum of land (40.4/150 hectares)
 - Preference to be given to former D6 residents
 - Raise concern of 5000 units-need of claimants must firstly be satisfied

Clause 2.6

- What document supports award?
- Award without the payment of R225000?
- Presentation needed on shares by a business expert.
- De-link shares from restitution of land rights

PRIVATE COMPANY PROVISIONS

Clause 4

- Can Public Funds be transferred to a Private Company in terms of the Restitution Act ?
- Is the new Fund Administrator Agreement (Deloitte) to oversee the cash flow of Public Finance as it is currently doing with the Pilot Phase 2 development project?
- Why not a Non-profit Organization to manage the development of residential housing and retail opportunities for residents of D6?

LIMITATION OF LIABILITY

Clause 5

- Who is going to be held liable for decisions that the Company makes? Accountability issues required clarification? Greater clarification needed i.r.o this clause

POWERS OF THE COMPANY

Clause 7.1.2

- "Assets" should be replaced with the words "commercial assets" that will clearly exclude the restitution land earmarked for residential development.

Clause 7.1.3.2.2

- This clause should be clarified in much more detail as it will critical for the running of the company's business!
- This CLAUSE (two words) is viewed as the foundation of the company as no company can function without financial resources (cash and/or property assets (collateral)

RESTRICTIVE CONDITIONS

SHARES

Clause 9.1.1

- The different types of shares still to be specified in the MOI - provision is only made for Ordinary shares.
- How many votes attached to a single share?

TRANSFER OF SECURITIES

RESTRICTIONS ON THE DISPOSAL OF SHARES

Clause 11.1

- Why the need for a "lock-in" clause in the first place?
- The market should determine when shareholders wish to dispose of their shares. This clause militates against free market principles and places a restriction on the rights of shareholders to trade with their investment. There should be no restrictions.

Clause 11.3

- Is this clause in line with general good commercial practices and why is it necessary?
- This clause is viewed as placing an unwarranted encumbrance on shareholders. This clause should not be inserted without further expert advice having been obtained. The gentrification argument is telling the investors (claimants of D6) what is good for them. This cannot be a unilateral decision to dictate what is in the best interest of the investors.

Clause 11.5.1

- Should the word "Directors" not be replaced by the word "Board"?
- This MOI is interspersed with the words "the Board and "the Director" - consistency is important.

VOLUNTARY DISPOSAL OF EQUITY AND RIGHTS OF PRE-EMPTION

Clause 12.1

- This Clause relates directly to Clause 11 above.
- This clause infringes on the rights of investors to trade freely within a free market system. This clause should be deleted as it viewed as dictatorial.
- The de-linking of the claimant land rights from the commercial development of D6 makes this clause superfluous. The Restitution of Land Rights Act covers the issue of the selling of restituted claimants' homes adequately.

CONFLICT BETWEEN VOLUNTARY SALES AND FORCED SALES

INVOLUNTARY TRANSMISSION OF SECURITIES

Clause 15.1

- No lock-in period.
- See sticky notes at Clause 11 above. **Clause 15.1**
- Should it read "the Board"?

DEBT INSTRUMENTS

CAPITALISATION SHARES

Clause 17.1

- Define "capitalisation shares"

Clause 17.3

- Section 47 of the Companies Act? Qualify so and elsewhere in this MOI.

BENEFICIAL INTERESTS IN SECURITIES

Clause 18

- Section 56(1) of the Companies Act? Qualify so and elsewhere in this MOI.

FINANCIAL ASSISTANCE

ACQUISITION BY THE COMPANY OF ITS OWN SHARES

Clause 20.1.2

- Clarify type of subsidiary company?
- A D6 Non-profit Company and/or private subsidiaries? Implications for buying of individual shares by claimants who cannot afford to do so?

Clause 20.1.2.2

- What is the rationale for no voting rights? Is this a general commercial practice?

RECORD DATE FOR EXERCISE OF SHAREHOLDER RIGHTS

SHAREHOLDERS' MEETINGS

Clause 22.3.2

- Why such a low percentage? Is this in line with general accepted commercial practice?
- Voting rights attached to shares must be clarified to have a common understanding of implications.

Clause 22.9.1

- Voting rights attached to shares must be clarified to have a common understanding of implications.

SHAREHOLDERS' MEETINGS BY ELECTRONIC COMMUNICATION

VOTES OF SHAREHOLDERS

Clause 24.1.1

- Is this in line with accepted commercial practice?

PROXIES AND REPRESENTATIVES

SHAREHOLDERS' RESOLUTIONS

Clause 26.1

- "Voting rights" versus the "number of votes" need to be clarified - sticky notes above refers.

SHAREHOLDERS ACTING OTHER THAN AT A MEETING

COMPOSITION AND POWERS OF THE BOARD OF DIRECTORS

Clause 28

- Eligibility - Must be a verified claimant
- Qualifications criteria – Companies Act – Section 69
- Process for fair and free elections – Independent electoral support (IEC) – claimant list not updated
- 21 total membership for Board 5 X Govt.
- 12 x Claimants/Shareholders
- 2 x Independent Experts
- 2 x Ex-officio members (CEO + CFO)
- At least 8 from the RG to serve on Board to ensure continuity – centrality of claimants.
- The remaining four members must also be elected from the claimant community
- The D6BT must not have separate status on the Board – must be elected from the claimant community.

Clause 28.5.2

- No special rights should be accorded to D6BT. Must be part of claimant body.
- The word "D6BT should be deleted from this clause.

Clause 28.10

- Should read the Board?

Clause 28.14

- The term "place of profit under the company?" must be clearly defined.
- This is a grave concern for possible conflicts of interests by being both a referee and player in decision-making processes?
- Need to clarify whether this is an accepted good business practice.

Clause 28.15

- Should the Director not at least declare the remuneration/other benefits for conflict of interest purposes? Good business ethics?
- Clarify if this is in line with best business practices.

DIRECTORS' MEETINGS**DIRECTORS' COMPENSATION AND FINANCIAL ASSISTANCE****Clause 30.1**

- Concur that guide lines be set as indicated by LP4

CHIEF EXECUTIVE OFFICER AND CHIEF FINANCIAL OFFICER**INDEMNIFICATION OF DIRECTORS****COMMITTEES OF THE BOARD****SPECIALLY PROTECTED MATTERS**

- Who decided on what matters require special protection? Is this in line with general best business practice?
- The issues need to be interrogated more deeply to get a common understanding of all the implications.

ANNUAL FINANCIAL STATEMENTS**DISTRIBUTIONS****Clause 36**

- The definition of "Distribution" as contained in the Companies Act, 2008 should be inserted in the MOI for ease of reference.
- More than 2 pages of rules are set out under Clause 36 in this regard.

ACCESS TO COMPANY RECORDS**NOTICES****AMENDMENT OF MEMORANDUM OF INCORPORATION****SCHEDULE 2: SPECIALLY PROTECTED MATTERS**

- Why the need for special protected matters?
- The MOI (underpinned by the Company's Act) and the companies set of rules to be developed should be sufficient to deal with all matters related to the business.

4.3 RECOMMENDATIONS

- (a) The inclusion on the board of qualified members of the RG, as claimant's representatives duly nominated by claimants. The composition of the Board of Directors should consist of a majority D6 claimants (future residents) elected by the D6 claimant community.
- (b) The right of claimants to sell their property should not be inhibited, as some claimants are representing more than just one beneficiary on behalf of claimants that may be deceased or incapacitated. Other claimants may, once their claim has been settled, not be adequately accommodated in their new home. The ability to unlock some value of their properties in their lifetime should be a benefit of restitution.
- (c) There seems to be a need for a SPV, with the apparent willingness from the city to transfer the Land into the name of an SPV only, together with the central government's commitment to transfer the funds required for the construction of the restitution homes into the account of the SPV. This, however, should not be the only option, as the capacity within Government (all 3 spheres) should be fully explored to ascertain whether the management of the construction of houses for the claimants (separate from embarking on cross-subsidisation business ventures) is not a more feasible option.
- (d) A major concern comes with the management of such a vehicle. Claimants are dissatisfied with the development of the pilot projects, and anticipate that the management of the SPV may not be without its challenges. The RG strongly recommends that the land earmarked for the construction of Restitution homes should be immediately separated from the assets of the business company, as to take all liability away from such land.
- (e) Also, all funds directly earmarked for construction of restitution homes should also be separated from company funds and assets.
- (f) All aspects related to the **R700 million from Government** from budget source to timing and process for transfer and disbursement and related legal provisions should be fully specified in the MOI.

PART 4: APPEAL FOR REVIEW: CAPE PENINSULA UNIVERSITY OF TECHNOLOGY (CPUT) CAMPUS AT THE "HEART OF DISTRICT SIX":

1. Introduction

The Restitution of Land Rights Act No. 22 of 1994 allows for the persons dispossessed of rights in land in District Six to lodge claims for restitution with respect to these dispossessions, seeking restoration to the dispossessed community of the land of which it was dispossessed and the redevelopment of the land in order to re-establish the community and District Six itself.

2. The Key Issues

- (a) Of the original 150 hectares of District Six land only 40 hectares now remain for restitution purposes and besides the commercial developments that have eaten away hectares outside of restitution processes the biggest blot on the landscape situated in the heart of District Six is the former Cape Technicon now renamed CPUT.
- (b) In the Development Framework this CPUT site area is now referred to as a “spatial constraint of single land use and a physical impenetrable barrier to movement”. The decision to build the Cape Technicon now represents a scar in the heart of this proposed development and serves as a reminder of the greed and arrogance of a selected group of “white officials” who against all popular sentiment at the time and even with an alternative site available stubbornly went ahead and “claimed” the site. Existing churches and a mosque now located in the precinct of this CPUT as underutilised and disused facilities serve to remind of the destructive intent and disregard for human endeavour. Attempts have been made in the past to ease troubled consciousness by placing a moratorium on any expansion and even “returning” some sports field for restitution purposes but why stop there.
- (c) The BIG Question remains. Why can't we as claimants claim back the entire 30 hectare complex now relegated as a CPUT Cape Town satellite campus (of the main campus in Bellville) and transform it into a multipurpose integrated community facility that can serve and be celebrated by all the people of Cape Town as an iconic symbol of restitution in giving back the “heart of District six to the people. Arguments may abound about the need for such an educational facility to serve the new community but it could be argued that such a limited use provision can be relocated to other parts of the City.

3. RECOMMENDATIONS ON CPUT CAMPUS

- (a) The RG feel strongly that by transforming the existing facility into an integrated and vibrant mixed use commercial, entertainment, tourism and recreational hub will not only inject life into the centre of Cape Town and its people but the on-going economic benefits to the Cape Town community will more than compensate for a relocated CPUT city campus facility. Such a facility in the “heart “ of District Six will restore pride and dignity to the restitution process and remove what would have remained a scar and reminder of intransigence and greed.
- (b) The RG therefore makes this appeal for the authorities and stakeholders to undertake a strategic review and economic impact assessment of transforming the CPUT site into a community facility and thoroughfare for all the people of Cape Town and to explore the feasibility of moving CPUT to a more suitable site that will serve its expanded mandate well into the future.

- (c) The CPUT site can then become the central buzz and hub of a new community in this transformed heart of District Six that could include facilities such as (some suggestions only)
- (1) A Hotel on Hanover St by transforming the existing admin-block.
 - (2) Using exiting lecture halls for a new Conference Centre facility.
 - (3) The existing stepped amphi-theatre space being used as a focussed space for movement, entertainment, opens air trading and side shows.
 - (4) Lower level classroom space been transformed into retail outlets, restaurants, tourist attractions, and commercial opportunities for SMME'S and some franchises.
 - (5) Could include anchor retail tenants like Pick n Pay, Checkers, Woollies, Edgars and other famous brands. Think of what this means for employment and job creation. All it will take is imagination and courage to reinvigorate the heart of District Six into an iconic space of "restitution excellence" that even from a tourism perspective can rival the Waterfront as a tourist attraction and a "must experience" for all visitors to the city.
 - (6) So let's take the **centrality of the claimants** to new heights as we make an impassioned appeal for a consideration to "claim back our heart" by pumping in new opportunities for the returning community and the broader interest of Cape Town and its people.
 - (7) Even great opportunities for smaller business development such as design and manufacturing industry. In fact bring the Fringe from the fringe into the heart of the design capital 2014.
 - (8) Maybe even a Retirement / old age home to serve the community near to all convenient facilities.
 - (9) Even room for a small hospital / clinic and health facilities. Perhaps a Virgin Active.
 - (10) The list goes on as the imagination takes hold. Opportunities are endless.
 - (11) Even the District Six Museum could relocate and expanded to include sports heritage and give back the Methodist Church as it once was to serve the people.

PART 5: CONCLUSION

1. RESTITUTION FUNDING

1.1 KEY QUESTIONS

- (1) What is the asset base for the intended business venture?

- (2) Has a detailed business risk assessment been undertaken within the CBD to assess the viability of a sustainable business venture?
- (3) What is the principal and/or specific business of the envisaged company in accordance with ordinary business principles (To provide goods and services?);
- (4) Who **currently owns** the developed business and/or housing rental properties?
- (5) Who **currently owns** the undeveloped land intended for commercial business?
- (6) What is the extent of the developed properties?
- (7) What is the extent of the undeveloped land?
- (8) Is the D6 community who have to be restituted **entitled** to the developed and undeveloped business properties/land? **On what legal or other basis** (Section of Act, Agreement and/or donation etc.)?
- (9) If the answer to Question 8 is in the affirmative, does it mean that each claimant is than already **entitled** to an equal shareholding in this collective land/property ownership by virtue of his/her restitution in land rights?
- (10) What is the quantum of the **monthly/annual income** currently collected for developed business and/or housing rental properties?
- (11) Is the **budgeted R700m**, which the DRDLR confirmed available in 2 truncheons, namely R350m in the financial year 2012/13 and R350m in the financial year 2013/14 to be transferred to the SPV and for which purpose (**for the construction of houses?**)?

1.2 KEY ISSUES TO BE ADDRESSED

- (a) Handing over of assets and liabilities
- (b) Borrowing powers not in conflict with Chapter 8 of the PFMA.
- (c) Accounting authority - Provide for accountability in accordance with Section 49 of the PFMA.
- (d) Financial year - The financial year of a Public Entity is from 1 April in any year to 31 March of the following year, but the first financial year is from the date of coming into operation of its Act to 31 March of the following year.
- (e) Business and Financial Plans and arrangements which provide for accountability and financial systems and reporting mechanisms are covered by the PFMA.

- (f) Annual report and financial state of affairs which provide for arrangements covering balance sheet, income statement, cash flow statement and audit arrangements as well as publication and tabling of annual report are covered by the PFMA.
- (g) Accountability and dissolution of a Public Entity.
- (h) Business agreement between a Public Entity and responsible Department if the Public Entity renders a service to the Department.
- (i) Tax liability.
- (j) Sources of funding of the Public Entity.

1.3 RECOMMENDATIONS

- (a) As it is not good business practice to enter blindly into a major venture, it is imperative that provision should explicitly be made in the MOI, at a high level, that clearly distinguish the specific assets, liabilities, rights and obligations that is to be transferred to the Public Entity (e.g. which movable and immovable property, total amount of project funds, contracting arrangements, stamp duties, transfer duties or registration fees etc.)

2. RESPONSES TO THE QUESTIONS OF THE MINISTER

- (a) In view of the aforementioned conceptualisation of the past events that played off since 1996 and that only the construction of 138 dwellings display the fruits of all the restitution endeavours after more than 15 years, than the questions that the Minister posed to both the D6BT and RG reveals starkly that it cannot be business as usual.
- (b) These questions as set out below challenge not only the D6BT and the RG as representative bodies, but the claimant community as a whole to work together harmoniously to make their return to D6 a reality by 2014. If this was the only impediment/blockage that existed than the resolution of this impediment would have been relatively an easy one. The hard reality is, however, that that the current restitution processes that has been put in place is so intertwined, and given the lack of transparency, openness and honesty, it has left a legacy of disillusionment and deep frustrations among the claimant community in its wake. All that the claimants are asking when are we returning to our beloved place of birth?
- (c) With this brief backdrop it is possible to respond to the Minister's questions as follows:

Question 1: When are the claimants getting back to District 6, and how?

- (a) The end date of 2014 earmarked for all the claimants to return to D6 is possible provided that the current Section 42D Framework

Agreement and Restitution Settlement Agreement (Memorandum of Agreement) are annulled as a matter of priority.

- (b) The root cause of the blockages within the current restitution processes is the current dual role of the D6BT to act as both "referee and player" because of the intertwined set of secondary agreements stemming from the Section 42D Framework Agreement that empowered the D6BT with legal authority that is not fully in line with the Restitution in Land Rights Act.
- (c) The Department should reclaim its authority and responsibility to take charge of the restitution processes and bring it in line with the Act. The Department should never again allow a non-organ of State to share with it responsibilities but not being held accountable for its actions and deliverables. The internal administrative capacity of the local office of the Department also needs to be strengthened to be able to function more efficiently and effectively.

Question 2: What will it take to achieve that?

- (a) The full co-operation between all three spheres of Government and the claimants is essential to achieve the return of the claimants by 2014. To this end the RG wish to caution in the making of over hasty decisions just to resolve the current impasse to get the restitution processes of the ground.
- (b) In practical terms the following need to be done by the Department:
 - (1) Review all the current WC: RLCC Restitution Settlement Agreements and bring it in line with the legally binding National Settlement Agreement of the Department;
 - (2) The role of the D6BT to act as Developer (referee) should be dissolved with immediate effect as Pilot Phase 2 is now completed. The stage has also outgrown the capacity of the D6BT to manage and oversee a project of this magnitude, complexity and the public funds involved;
 - (3) That the disparities within claimant lists (Tenants, Property Owners and Traders) be resolved by the Department as a matter of extreme urgency, given the critical time and probable disruptive implications for the setting up of a Non-profit Management Company;
 - (4) That the RG serve as an honest and trusted partner within a mandate that do not infringe on the responsibilities of Government. In this regard the RG can support the Department to deal with the challenging issue listed in paragraphs 2.1 and 2.3 above.
- (c) Hold a full day workshop (indaba) with all the verified claimants to get endorsement of all the inputs/recommendations made by the

RG, before it is formally submitted to the Department for further consideration. This critical step is imperative to achieve unity of purpose for the envisaged restitution processes to unfold with the tested majority support of the claimants. This will indeed demonstrate that meaningful constructive and participatory consultations with the claimant community will take place for the first time since 1998. The way in which this indaba should be structured and facilitated is important and should not take on the form of a “buy-in and/or coercion” session. Once this bridge has been crossed it will ensure a green light for the accelerated phases of the development project. The RG feels confident, with the strategic support of the Department, that the majority of claimants will endorse its inputs/recommendations.

Question 3: Who plays what role in that regard?

- (a) The major responsibility of restitution resides with the Department, with the support of the other two tiers of Government (Provincial and Local). The role that the RG can and will play is to rekindle the spirit of the claimants and bring new hope and confidence in the restitution processes administered by the Department and the other tiers of Government, especially the technical and other support roles of the CoCT in respect of infrastructure development and rezoning of residential land for accelerated housing construction.
- (b) The development of a holistic zoning and development plan, that will assist the formulation of allocation criteria, is essential for good governance of the latter phases of the restitution process. This holistic approach will enhance the confidence of the claimants and bring greater certainty and peace in the hearts and minds of the claimants. The roles that each of the stakeholders must play will require full commitment at all levels of Government to finalise the technical and tactical planning (land surveying, bulk infrastructure services, architectural housing and other design etc.) and fast-tracking the rezoning of those residential areas where rezoning is still required.
- (c) Although each stakeholder has their specific roles to play, the secret lies in good teamwork that can achieve their goals within a well-structured integrated project plan. In this regard the Technical Steercom and the Task Team are the forums where teamwork must be demonstrated with concrete outcomes.

The context within which these questions are answered is –

The centrality of the claimants; and,

What is important within this context is that the expression must be given to the needs and requirements of the claimants to demonstrate practically that their voices are heard and acted upon.

The strategic support to be given to them by government and the D6 Trust

- (a) Thus far the Department (and hopefully later the other tiers of Government) have diligently fulfilled its commitment in this regard and the RG wish to express its sincere thanks and appreciation to Government. The Department has been true to its word. With the strengthening of the on-going partnership between Government and the claimants via the RG, the RG is confident that the goals set by our State President Jacob Zuma and the commitment and dedication of Minister Nkwinti, is attainable.
- (b) Although insignificant support has come from the D6BT the RG understand the dynamics and challenges that the D6BT has to contend with. It is the view of the RG that the D6BT should demonstrate openness and transparency in both its roles as a Trust and Developer if it wishes to dispel the negative perceptions in the way it operates and serve the claimants of D6.

In other words, this joint effort is meant to facilitate the work of the RG, in its effort to carry out the mandate given to it by the claimants, especially during the lasts two plenaries.

In summary the whole is as strong as its constituent parts, and the cause is greater than any individual. The RG has not lost sight of the bigger picture and has worked consistently to serve the best interest of the claimants.

3. INAUGERAL AGM AND SPV LAUNCH IN 2012

- (a) By The 7th December 2012 the RG was informed that the decision had been taken to have the **inaugural AGM with the Claimants on the 19 January 2013 to elect Board members to serve on the SPV and to approve the MOI on this occasion.** Thereafter the decision was also taken to symbolically launch the SPV on the 11th February 2013 which to the day coincides with the 100th anniversary of the 1913 Native Land Act.
- (b) The RG is of the opinion that these dates were decided without consultation and consideration of keeping the claimants informed of developments and this now presents a problem because no consultation or briefing on these events have been communicated to the claimants.
- (c) The RG feels uncomfortable with the current stringent time lines but feel that the following recommendations in staging these events should be considered.

4. EMPOWERMENT OF CLAIMANTS

- (a) That a communication and Newsletter be sent to Claimants with an Invitation to attend a General Meeting (whole day workshop) during March 2013 to update them on the developments in the RG Report as well as the road map for 2013.
- (b) The RG Position Paper and other relevant documentation (MOI etc.) can be timeously sent to all claimants for perusal and to prepare them to make inputs at the Workshop
- (c) On a date to be determined in March 2013 the Claimants participate in a Workshop to engage them on the RG Position Paper and to include any additional inputs from the claimants for consideration and approval. This will serve to confirm the Development Framework, the revisions to the Business Plan and the MOI.
- (d) The above recommendations are a more inclusive and transparent process and allow for sufficient notification to claimants as well as ensuring their meaningful participation in the steps leading up to this significant phase of the Development.

PART 5: ANNEXURES

Annexure 5.1: Template of Section 42D Agreement for D6 Tenant Claimants opting for Redevelopment Option (Memorandum of Agreement)

Annexure 5.2: Template of DRDLR National Settlement Agreement (In settlement of D6 Land Claims in terms of Section 42D of the Restitution of Land Rights Act (22/1994))

Annexure 5.3: [Draft MOI with "Sticky Notes"](#)

Annexure 5.4: [RG Depiction of the current restitution process](#)

Annexure 5.5: [Depiction of the RG proposed restitution process](#)

Annexure 5.6: [RG Technical Team Roadmap](#)

Annexure 5.7: [RG D6 Photo Album](#)

PART 6: REFERENCES

- 2.1.4 List of validated claimants
- 2.1.5 Facilitators Report (Late Dr Alexander/Elaine Clark Report)
- 2.1.6 Record of Understanding (13 September 1998)
- 2.1.7 Section 42D: Framework Agreement (26 November 2000)
- 2.1.8 The Minutes of the Steercom Meetings since its inception (2006 -)
- 2.1.9 D6 Conceptual Development Framework (9th Draft) (March 2003)
- 2.1.10 D6 Heritage Impact Assessment (HIA) Report (May 2003)
- 2.1.11 Memorandum of Agreement (Land Development Agreement) (15 May 2003)
- 2.1.12 D6 Draft Development Framework (Summary document) (August 2005)
- 2.1.13 Land Development Agreement for the 1st & 2nd Pilot Projects (7, 10 and 26 April 2006)
- 2.1.14 Memorandum of Agreement for the Transfer of Funds to be used in the 2nd Pilot Project in the Redevelopment of D6 (27 January 2009)
- 2.1.15 Proposed D6 Final Draft Development Framework Report (FDDF) (November 2010)
- 2.1.16 Presentations of Proposed Development Business Plan (these are slides only-Report awaited) (25 October 2011)
- 2.1.17 Memorandum of Agreement (Individual Deed of Disposal Agreement)
- 2.1.18 Claimant Resolution 2012 (19 July 2012)
- 2.1.19 Draft Memorandum of Incorporation (MOI) (8 September 2012)
- 2.1.20 Explanatory memorandum i.r.o of Memorandum of Incorporation (24 February 2012)
- 2.1.21 Trust Deed of the D6BT (11 October 2001)
- 2.1.22 D6BT Social Compact
- 2.1.23 Restitution of Land Rights Act (Act 22/1994)
- 2.1.24 D6 Claimant Lists (Tenant and Property Owners)
- 2.1.25 D6 Claimant Questions and responses contained in FDDF Report
- 2.1.26 Annual Report: Commission of Restitution of Land Rights, 2012
- 2.1.27 Annual Report: DRDLR, 2011
- 2.1.28 LCC Judgement: Cato Manor, (9/98)
- 2.1.29 Companies Act, 2008
- 2.1.30 Public Finance Management Act (PFMA) (Act 29/1999) as amended