

PPPF4/2015

**FEASIBILITY STUDY ON LAND USE PROJECTS FOR STUDENT
ACCOMMODATION**

NEEDS ANALYSIS REPORT

**PREPARED AND SUBMITTED BY:
TRANSACTION ADVISORS
AUGUST 14, 2014**



Table of Contents

1. MANDATE OUTLINE.....	4
2. PURPOSE OF DOCUMENT.....	5
3. PROJECT SCOPE & PROJECT PHASES OUTLINE.....	5
4. METHODOLOGY AND APPROACH.....	7
5. FINDINGS.....	8
5.1. Student Accommodation Minimum Standards.....	8
5.2. High Level Benchmark Analysis of Other Similar Projects	12
5.2.1. Private sector-led developments	12
5.2.2. Affordable Designs for Student Housing	14
5.3. Findings on Institutions Operating within the Municipality’s Jurisdiction	15
5.4. Findings on Stakeholder Engagements with Identified Institutions.....	16
5.4.1. University of Limpopo (UL)	16
5.4.2. UNISA Polokwane Campus	17
5.4.3. Tshwane University of Technology (TUT) Polokwane Campus	17
5.4.4. Capricorn FET College.....	20
5.4.5. Boston City Campus	21
5.5. Preliminary Technical Findings	22
5.6. Preliminary Due Diligence Findings.....	22
5.6.1. Legal analysis.....	22
5.6.2. The Municipality’s Legal Obligations.....	23
5.6.3. Statutory and general regulatory matters pertaining to this project	24
5.6.4. The Impact of the MFMA on Decision-Making Powers of Municipalities.....	29
5.6.5. Contracts Having Future Budgetary Implications.....	30
5.6.6. Review of Project Documents and Advice Thereon.....	32
6. CONCLUSIONS ON NEEDS ANALYSIS PHASE & WAY FORWARD.....	34

Index of Tables and Figures

Table 1: Project Scope and Phases.....	5
Table 2: Student Accommodation Minimum Standards.....	9
Table 3: Polokwane Tertiary Institutions	15
Table 4: Identified Stakeholders - Student Accommodation Status.....	16
Table 5: Recreational Facilities Requirements	18
Figure 1: TUT Accommodation Divisional Structure.....	17

1. MANDATE OUTLINE

Maya Group is mandated by Polokwane Municipality (“the Client” or “the Municipality”) to conduct a feasibility study on the viability of developing student accommodation on an off-balance sheet, long-term lease basis. This feasibility study is specifically based on land owned by the Municipality, which has been earmarked for these projects – Extension 79 (1ha), and Ext 106 (11.5ha)- and approved by the Municipality's Council for such use.

This mandate entails the following:

- a) Conducting a market assessment study to ascertain the need for such a project on the identified municipal land (“Needs Analysis”)
- b) Analysing various options for concept drawings and designs for the project and Costing the development (“Technical Options Analysis)
- c) Conducting the requisite legal and institutional due diligence to advise on compliance and structuring processes for the project (“Project Due Diligence”);
- d) Assessing the commercial feasibility of the project based on the technical option recommended for the project (“Value Assessment”)
- e) Advising on an optimal procurement option that delivers value for money to the Municipality (“Feasibility Report & Recommendations”).

2. PURPOSE OF DOCUMENT

The purpose of this document is to present findings from the first phase of the project- the Needs Analysis. The findings entailed in here also give an outline of the methodology and approach to executing on the next phase of the transaction.

3. PROJECT SCOPE & PROJECT PHASES OUTLINE

Table 1: Project Scope and Phases

PROJECT PHASES OUTLINE	PROJECT SCOPE
PHASE 1: NEEDS ANALYSIS	
Project Mobilisation & Governance Protocols	<ul style="list-style-type: none"> Assemble Team & Identify Regulatory Requirements and Constraints Determine Which Specifications, Quality Levels and Standards Apply
Market Research & Demand Estimations	<ul style="list-style-type: none"> Assess the market and estimate demand
Preliminary Customer Engagements	<ul style="list-style-type: none"> Engage identified customers
Technical Review of Municipal Site Maps Planning	<ul style="list-style-type: none"> Review site maps and provide initial analysis results
Submit Needs Assessment Report	
PHASE 2: SOLUTIONS OPTIONS ANALYSIS	
Concept Drawings & Costing	<ul style="list-style-type: none"> Develop concept drawings and cost designs
Technical Feasibility Assessments & Options	<ul style="list-style-type: none"> Provide technical opinion on possible options
Submit Technical Feasibility Report	
PHASE 3: PROJECT DUE DILIGENCE	
Institutional Analysis Recommendations	<ul style="list-style-type: none"> Make recommendations on the Municipality's capacity to implement the project vis-à-vis the regulatory environment
Regulatory and policy framework	<ul style="list-style-type: none"> Review regulatory and policy environment

PPPF5/2014: FEASIBILITY STUDY FOR LAND USE
– STUDENT ACCOMMODATION

PROJECT PHASES OUTLINE

PROJECT SCOPE

Site Availability Assessment & Confirmation

- Assess and confirm site availability

Submit Due Diligence Report

PHASE 4: VALUE ASSESSMENT

Financial Modelling

- Model the recommended option

Risk Assessment

- Perform risk assessment

Transaction Commercial Structuring & Viability Tests

- Advise on the commercial structuring of the project and conduct a viability test

PHASE 5: COMPREHENSIVE FEASIBILITY REPORT

Feasibility Report - FINAL CLIENT SUBMISSION

4. METHODOLOGY AND APPROACH

The Needs Analysis phase was executed using the following methodology:

- A project inception meeting was held with the client to present on project governance:
 - clarifying the scope and approach to the project
 - presenting and obtaining approval of the client on the project timelines
 - presenting the methodology to executing on the project
 - presenting the preliminary research and findings pertaining to the project

- A desktop analysis was conducted on the project and its macro environment to enable the transaction advisors to provide a complete perspective to the Municipality:
 - research on higher education institutions operating within the Municipality's area of coverage was conducted;
 - research and analysis of the Department of Higher Education Minimum Standards for student accommodation was also conducted to understand the parameters within which this project is being executed;
 - Collected data on current costs per bed for the identified institutions;

- Further engagements were held with the Municipality to discuss the project and/or to obtain the necessary information for analysis :
 - Stand diagrams for the two proposed areas;
 - Town planning parameters for each site;
 - Council Resolution approving IDP and Housing Sector Plan
 - Housing Sector Plan
 - Geotechnical Report

- The Transaction Advisors also held meetings with identified stakeholders, specifically the higher education institutions, to ascertain the need for such a project and to explore possible opportunities for collaboration with the institutions.

The questions needing answers from this phase are:

- a) Is there an identified site?
- b) Where is the identified site?
- c) Who are the customers?
- d) Where are the customers?

The findings from the analysis and research conducted are presented in the sections that follow.

5. FINDINGS

5.1. Student Accommodation Minimum Standards

The Department of Higher Education and Training (“DHET”) Ministerial report has made findings and recommendations on how the challenge of student accommodation needs to be addressed. These include:

- Introducing minimum standards for student accommodation facilities to improve the condition of student housing in South Africa;
- Recommending that Universities consider options to increase the accommodation facilities to between 50-80% of the student population. **This includes the option of Universities partnering with private sector to increase its capacity;**
- Improving the accounting and record keeping for student accommodation facilities and segregating this from record keeping (accounting records) of the rest of the University’s operations to more accurately account for the cost of student accommodation;
- Considering modular housing options for student housing development; and

- Looking into ways to regulate the facilities provided by the private sector.

The minimum standards by DHET are intended to regularize and standardize norms for private student accommodation. These standards will be critical at the technical options analysis phase and in considering possible designs for the project. These standards will therefore be adhered to, or reasonable variations to the standards will be pointed out when the technical options are presented.

Table 2: Student Accommodation Minimum Standards

ITEM	MINIMUM STANDARDS
Positioning of Residence	<ul style="list-style-type: none"> ▪ On-site: Must preferably be situated within the campus security perimeter – must afford residents the freedom to make full use of the academic, social, cultural and sporting programs of the university without restriction or hindrance. ▪ Off-site: Must be no more than 30 minutes travel from the campus and must provide affordable and secure transport running at regular intervals from early morning to late night. Residence must be safe and secure for the students.
Design of residences - The same minimum standards are applicable to private student housing	<ul style="list-style-type: none"> ▪ Single rooms should be no smaller than 9m², and double rooms should be no smaller than 14m². <ul style="list-style-type: none"> • Rooms should be furnished and fitted as per the specifications detailed in the ▪ Minimum Standards for Student Housing room specification manual. ▪ Dormitory/hall type residence buildings should not exceed the following ablution facilities ratios: <ul style="list-style-type: none"> • Wash basins – 1 per 4 student residents. • Shower cubicles – 1 per 7 student residents. • Lavatories – 1 per 5 student residents. • Shower and lavatory cubicles shall be designed in such a way that individual privacy is provided (i.e., no communal showers or toilets).

PPPF5/2014: FEASIBILITY STUDY FOR LAND USE
 – STUDENT ACCOMMODATION

ITEM	MINIMUM STANDARDS
	<ul style="list-style-type: none"> ▪ The following minimum social spaces should be provided: <ul style="list-style-type: none"> • Large common/meeting room – 1m² per student resident. • Smaller TV/meeting room – 0.5m² per student resident. ▪ Cooking inside student rooms shall not be permitted. Suitable food storage, preparation and kitchen space shall be provided, which shall be equipped in the following ratios which may not be exceeded: <ul style="list-style-type: none"> • Stove – 1 per 6 student residents. • Cold storage – 0.75m³ lockable storage space per student. • Sink – 1 per 15 student residents. • Lockable cupboards – 1 per student resident. • Microwave oven – 1 per 15 student residents. • Countertop space – sufficient for 15 students' simultaneous usage ▪ Wireless and/or fibre optic cable internet access is required in all student rooms and social spaces.
Health and Safety	<ul style="list-style-type: none"> ▪ Fire safety, prevention and detection mechanisms and procedures. ▪ Electricity and gas installations. ▪ Security staff, mechanisms and procedures. <ul style="list-style-type: none"> • In any building used to accommodate students, each student room as well as the building itself must be secure. ▪ Self-catering facilities <ul style="list-style-type: none"> • Unless adequately equipped kitchenettes are provided, cooking shall not be permitted in any student room. 'Adequate' here refers to sufficient preparation, storage, cold storage, cooking and washing/cleaning space and facilities. • Food preparation and cooking areas shall be provided which comply with the norms specified in 2.1.2 above. • Monthly hygiene audits of all communal self-catering facilities and areas should be carried out in addition to annual municipal hygiene inspections. ▪ Ablution areas and sanitation <ul style="list-style-type: none"> • All ablution areas should be cleaned at least once daily using

PPPF5/2014: FEASIBILITY STUDY FOR LAND USE
 – STUDENT ACCOMMODATION

ITEM	MINIMUM STANDARDS
	<p>cleaning industry standard chemicals and products.</p> <ul style="list-style-type: none"> • Shower doors or curtains must be fitted to shower cubicles to ensure privacy.
Standard Bedroom	<ul style="list-style-type: none"> ▪ Space Description <ul style="list-style-type: none"> • Walls – Spattered, Painted • Skirting – Timber Painted • Splashback – N/A • Floor – Durable linoleum or tiles • Ceiling – Conc - plastered ▪ Equipment Fitted/ installed by contractor <ul style="list-style-type: none"> • CBD joinery 1 • Curtain Rail (double) 1 • Towel Rail (1200mm) 1 • Mirror (300x400mm) 1 ▪ Furniture & Fittings <ul style="list-style-type: none"> • Steel Bed 1 • Study Table 1 • Desk Chair 1 • Book Shelf 1 • Curtains 1 • Bedding (set) 1 • Study Lamp / low energy 1 • Pin board 1 • Door pin board 1 • Wastepaper bin 1 • Mattress 1 • Bedside table 1 • Net curtains 1

Source: Ministerial Committee on Provision of Student Housing

5.2. High Level Benchmark Analysis of Other Similar Projects

According to statistics from the Department of Higher Education the available student accommodation in the country currently meets only 18 percent of the demand. The cost per bed for student accommodation also adds to this challenge.

- The cost and affordability of student accommodation is critical factor in being able to address this need. In urban areas such as Braamfontein (Gauteng), rental for a small studio or a one-bedroom apartment costs R2, 500 per month.
- The construction costs for similar projects are at around R180,000/bed with rentals at between R1,400/bed and R2,300/bed depending on room type and occupancy.

5.2.1. Private sector-led developments

There have been various developments for student accommodation by the private sector, or through public-private partnerships (“PPPs”), which yield some interesting indicators in the student accommodation market.

- i) In May 2011, Nedbank Corporate Property Finance provided R25 million in finance for a contemporary student development in Rosebank, Cape Town (Developers: Jeremy Chaitman and Shamus Fitzhenry who had acquired the land between 2007 and 2008). The development is a four-storey building with 55 two-bedroom apartments all between 34m² and 36m² in size. The development is aimed at students from the University of Cape Town, Varsity College, AFDA, CPUT and Damelin.
- ii) Another developer, South Point provides accommodation at an average price of R2, 500 a month. Wits University and the University of Cape Town (UCT) reportedly top up the NSFAS allocation to meet the cost of private accommodation facilities for its students. For example, in 2012, 535 UCT students

PPPF5/2014: FEASIBILITY STUDY FOR LAND USE
– STUDENT ACCOMMODATION

were on NSFAS. The NSFAS allocation at UCT amounted to R11, 400 per student but was topped up by UCT to R20, 400. Both universities have existing relationships with private accommodation companies such as South Point and Aengus Properties, among others. According to an article referring to South Point's development, the NSFAS allocation is falling short by about R4, 600 and R6,000 a month in major cities. At the Durban University of Technology, students on NSFAS living in private accommodation are not funded, and the students are therefore required to finance the shortfall.

- iii) Seeff properties estimates that student accommodation prices in Pretoria's Hatfield range from R2,800 to R4,500 per month as the property is in a prime area and the apartments are also leased to young working people.
- iv) Independent Property Consultants (IPC) estimates that rentals in Grahamstown (Eastern Cape) vary between R2, 500 and R3, 800 for one-bedroom to three-bedroom apartments close to Rhodes University.
- v) Another developer, MidCity's developments, is primarily developing suites that comprise between three to five bedrooms, where there are communal areas and all students have their own rooms. This accommodation typically costs around R2, 500 a month.
- vi) Property and development company, Aengus, says it has a rapidly growing portfolio of student flats in Johannesburg, Durban and Port Elizabeth that it has created largely by refurbishing existing mothballed office blocks. Rentals for Aengus flats range from R1, 950 to R2, 500 per student, per month for 10 months of the year.
- vii) Junction-S, which is a joint venture between Citiq, Jika Properties, and Lapalaka Developments, announced a R300m student village known as the Ekhaya Junction in Pretoria (November 2012). This affordable student housing development will provide accommodation for 2,300 students and is aimed at students studying at Tshwane University of Technology. The student village will have amenities such as Wi-Fi, study rooms, convenience store kiosks, a games room, eco-friendly water heat pumps, laundry facilities, daily cleaning and

maintenance and 24-hour security. The development is being financed by Futuregrowth, a division of the Old Mutual Group, and will be completed in 4-phases between 2012 and 2014.

- viii) A new development in Potchefstroom, aimed at students at the North West University, The Built Precinct, is providing rental of apartments at R5, 000 for a two-bedroom apartment.

5.2.2. Affordable Designs for Student Housing

STAG Student Lodge has responded to the need for efficient and cost-effective student accommodation. STAG found that lightweight steel structure technology is cheaper than bricks and can be applied to the South African context. The cost of the development using STAG's technology was however not disclosed. It is reported that frame construction as a base building technology has been around for years (using wood) but lightweight steel-framing techniques have become the dominant means of construction worldwide. STAG has been using this technology in South Africa for more than 7 years.

The new residence at the Stellenbosch University's Tygerberg campus (March 2013), which hosts the Faculty of Medicine and Health Sciences, took five months to build, which is six months less than the duration of normal construction methods. STAG's technology reportedly provides sustainable and energy-efficient structures. STAG installs heat pumps (or a combination of heat pumps and solar panels) in its developments, which reduces electrical use by 35% and by as much as 80%.

STAG's report indicates that this technology is used in the USA for high-rise buildings that could be as high as 100 storeys.

5.3. Findings on Institutions Operating within the Municipality’s Jurisdiction

The following tertiary institutions operate within the demarcations of the Municipality:

Table 3: Polokwane Tertiary Institutions

#	INSTITUTIONS
1.	University of Limpopo
2.	UNISA Polokwane Campus
3.	Tshwane University of Technology Campus
4.	Capricorn FET College
5.	Avuxeni Computer Academy
6.	Boston City Campus & Business College
7.	C T U Training Solutions
8.	Damelin Correspondence College
9.	Deodando Art School
10.	Graduate School of Leadership
11.	Intec College
12.	Integrity Business College
13.	Millennium College
14.	Mmakgodu Technical College
15.	MSC College-Polokwane
16.	Oval Institute of Further Education
17.	PC Training & Business College
18.	Pietersburg Technical College
19.	Jeppe College

Of the 19 institutions 5 institutions (1, 2, 3, 4, and 6) were identified as potential stakeholders.

5.4. Findings on Stakeholder Engagements with Identified Institutions

Table 4: Identified Stakeholders - Student Accommodation Status

#	INSTITUTIONS	NUMBER OF STUDENTS	ACCOMMODATION	# OF BEDS CURRENTLY AVAILABLE	RATE PER BED PER MONTH	STATUS
1.	University of Limpopo	N/A	Yes	N/A	R1,100	Need
2.	UNISA Polokwane Campus	N/A	No	N/A	N/A	Need
3.	Tshwane University of Technology Polokwane Campus	2 500	Yes	180	R2,000 average	Need
4.	Capricorn FET College - Polokwane Campus	5,800	Yes	187	R1,800- R2,200	Need
	- Seshego Campus	7,000	Yes	384		
5.	Boston City Campus & Business College	600	No	N/A	N/A	Need

The identified institutions were engaged, it was evident from the discussions held that there is a dire need for student accommodation in Polokwane. The following discoveries were made:

5.4.1. University of Limpopo (UL)

Upon our first meeting with Mr Moselekwa he noted that there was a need for student accommodation. Further to that he stated that the University cannot partner with the Municipality. He postulated that the role that the University would play, would be to officially recognize the Municipality as possessing certain qualifications and meeting the required minimum student accommodation standards – if or when the Municipality does in fact qualify.

A follow-up meeting was scheduled and confirmed but later rescheduled. Also critical to note is that UL does not have a campus in Polokwane town, and the identified sites may be too far and not suitable for the students studying at the Mankweng campus.

5.4.2. UNISA Polokwane Campus

An engagement was held with Mr. Jerry Malemela from UNISA Polokwane Campus, he could not provide any inputs into the subject matter, on the basis that the University was wholly a virtual university. All courses are conducted online, therefore there are no requirements to keep records of the students who come into the campus to use the facilities daily.

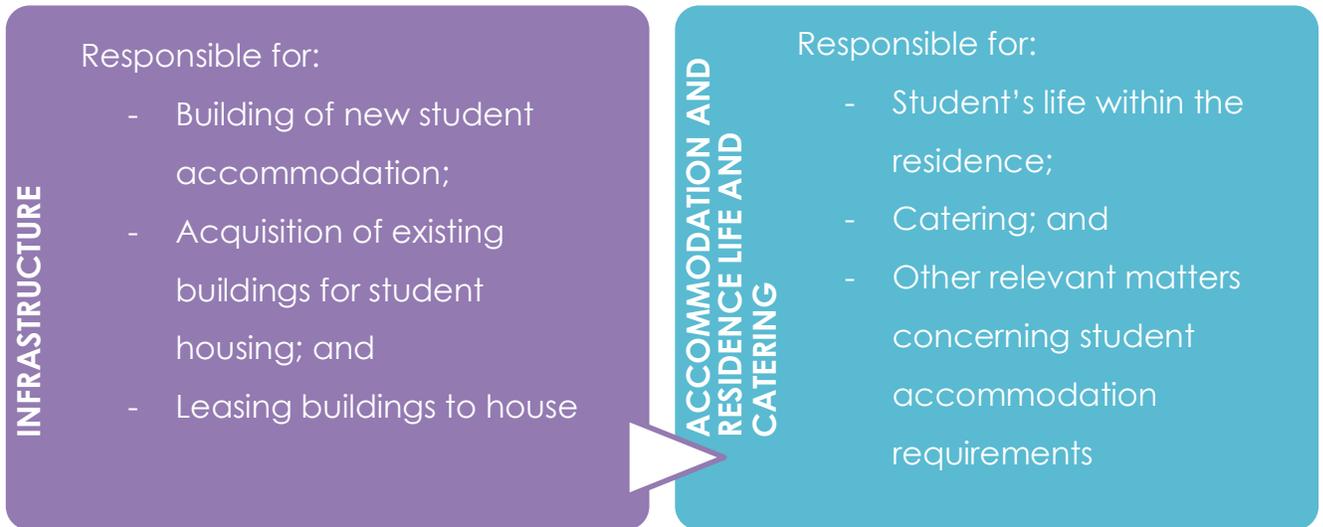
Our conversations with people around campus indicate that there is a need. One of the people spoken to at the Campus, was the Campus security guard. He mentioned that approximately 70% of the students who commute daily to the use the facilities (free WI-FI, library etc.) were not from Polokwane.

As a result of the configuration of the campus as a distance learning institution, the university does not charge students for accommodation. The envisaged project of the municipality can therefore attract these students directly, and enter into own payment arrangements.

5.4.3. Tshwane University of Technology (TUT) Polokwane Campus

The institution has 2 directorates both dealing with accommodation, but with differing responsibilities.

Figure 1: TUT Accommodation Divisional Structure



A meeting with Mr. Lekala, Polokwane Campus Manager Accommodation and Residence Life and Catering (ARCLC), revealed that there is a dire need for student housing.

TUT has 2500 students and only 180 beds. There is a need for more beds but there are no buildings that are suitable to house students. To be regarded as appropriate student housing, the buildings must meet the minimum standards for student accommodation and must have the requisite recreational facilities.

Table 5: Recreational Facilities Requirements

Facility	Number per residence (res)	Number per campus
Common Rooms	2	100
TVs in Common Rooms	2	100
MNet/DSTV in common rooms	1	59
Internet access in common rooms	1 per common room in newer residences	11
Kitchenette facilities	1 per res	50

PPPF5/2014: FEASIBILITY STUDY FOR LAND USE
 – STUDENT ACCOMMODATION

Facility	Number per residence (res)	Number per campus
Laundry facilities	2-3 per Res	130
Drying rooms/yards	1	50
Secure bicycle parking facility	None	None
Box/storage rooms	Minimum 2 per res	100
Vehicle parking area	1	50
Games rooms	No	7
Communal computers	1 - 2 per res	75
Communal printers	1 per res	50

TUT currently has 3 – 5 years lease arrangements. The institution's long-term vision is to own accommodation facilities, as this is cost-effective. **The current costs per bed are between R1800 – R2000.**

At times and because of NSFAS budgetary challenges the students are only able to pay for some or none of the accommodation fees. The institution at its own discretion, provides assistance to these students.

During the options analysis phase, a follow up meeting will be held with the relevant Deputy Vice Chancellor (DVC) to better understand their appetite for partnering with the Municipality. While in principle there is interest, TUT seems to be biased to a solution that allows them some form of partnership of the facilities. The options analysis phase will therefore explore potential structuring options of the project where TUT is involved, and assess the viability and attractiveness of the options for Polokwane Municipality.

5.4.4. Capricorn FET College

A meeting was held with Mr. Thabo Muleya (Head of Campus : Polokwane) and Ms. Vicky Langa (Manager Infrastructure). The College's representatives could not stress enough, how serious the need for student accommodation is.

The College has 2 sub-institutions within Polokwane, Polokwane city campus (Business School) and Seshego Campus (Engineering). Each campus has 5, 500 and 7, 000 students respectively. Although the College has 12, 500 students, it can only provide housing to 387 students because there are 387 beds for both campuses. **The current cost per bed at Capricorn FET college ranges between R18,000-R22,000 based on fees paid by NSFAS. Total student population currently paid for by NSFAS are estimated at 8,000 students.**

The student housing situation has given rise to many challenges for the students. Cases such as rape and mugging have been reported because the students have to travel long distances after having attended afternoon classes.

Capricorn had at one point leased a bread and breakfast to accommodate students. The college has on many occasion attempted to meet with Polokwane Municipality, to discuss ways of working together to tackle this situation. The Municipality has yet to come to the table (the meetings cited date back to on or around year 2010). The College's council met to strategize on how to handle the situation, the council took a resolution on the subject during the weekend of 24 July 2015 to explore long-term sustainable solutions for student accommodation as a matter of urgency. The intricate details of the resolution could not be disclosed at this stage.

In conclusion, the college advised Polokwane Municipality to submit a proposal of its proposed plans for student housing – the proposal is critical to the process, and to the prospective partnership.

It was clear from the meeting that the College has a very serious student accommodation need, and has on many occasions been the one originating conversations with the Municipality.

5.4.5. Boston City Campus

Melaney Beneke, Campus Manager, of Boston City Campus (Polokwane) was engaged to assess the student accommodation needs. Although the institution does not provide student housing, they had conducted a survey to assess how many of the students study with them but are not based in Polokwane.

The institution has 600 registered students and approximately 50% of them do not live at home. The survey was conducted on one group of students out of 4 (25%/150 of the students). Judging by the study, about 45% of that group of students studying at Boston are not located within the Capricorn District. 31% of which are from at least 155 KMs Away.

There is a need for student accommodation. The manager is working on a proposal to submit to Boston's head office, detailing their need for student housing.

The campus was interested in the Municipality's prospective student housing project.

5.5. Preliminary Technical Findings

The two proposed sites for the facilities are on virgin land that slopes gently, thus providing natural drainage. The sites are in close proximity to built up spaces therefore site services are in close proximity thereof.

The soils are sandy to loamy well drained soils and it appears from a visual assessment that there will be no need for special foundations. Further reliance is placed on geotechnical studies conducted by the Municipality as agreed to in the terms of reference of the Transaction Advisors.

The size of the ERFs appears adequate for the number of beds proposed in the RFP.

5.6. Preliminary Due Diligence Findings

5.6.1. Legal analysis

The City of Polokwane Local Municipality (“PLM”) decided to undertake a feasibility study to assess the viability of the PLM providing serviced accommodation to students enrolled in the various academic institutions operating within PLM (“the Project”). It is significant to state that the PLM seeks to enter into contractual arrangements with private sector entities for the purposes of financing, design, construction and operation of the serviced accommodation for a particular period, after which the facilities will then be transferred to the PLM in terms of ownership and management. At this stage, it is envisaged that the PLM’s contribution to such contractual arrangements would be to provide land for development of the facilities.

The Technical definition of the Project as provided by the PLM is as follows:

The intention is to develop suitable student accommodation models that will meet various needs of students. The ultimate objectives of the project are as follows:

- Provide quality, safe and well-maintained accommodation facilities to students*
- Provide opportunity to students to make options about living arrangements*
- Provide living & recreational opportunities for students*

The purpose of this analysis is to provide legal inputs into the feasibility study, more specifically on the Needs Analysis. This section of the report, being legal inputs into the Needs Analysis, will focus on the following aspects of the Project:-

- An assessment of the nature of the statutory framework within which the PLM operates as well its legal obligations, and provide our observations in that regard; and*
- An assessment of the existing project documents and general Council reports generated in pursuance of the Project. The rationale for perusing these documents is to enable us to determine and then furnish our views on the impact these may have on the Project.*

It is the understanding of the Legal Advisors that after undertaking our deliverables under this section of the report and concluding the review of the existing documents, the observations made in this section of the work may inform the next section of the work, being the Legal Due Diligence.

5.6.2. The Municipality's Legal Obligations

In view of the fact that the PLM seeks to enter into contractual arrangements with private sector entities for development of the student accommodation units and to make available municipal-owned land for the student accommodation, it is required to undertake a feasibility study as contemplated in section 120(4) of the Municipal

Finance Management Act. In particular the study must fully set out the benefits to the PLM in entering into such contractual arrangements, including value-for-money considerations, affordability and risk transfer.

Furthermore, PLM would have to ensure that the feasibility study serves before its council for a resolution permitting the contract with private sector entities. In the event that such a contractual arrangement is for a lengthy duration (or, in any event, takes longer than three years), resulting in multi-year budgetary commitments, PLM would also be required to obtain a council resolution authorising the transaction.

5.6.3. Statutory and general regulatory matters pertaining to this project

Applicable Legislation

- The Republic of South Africa Constitution Act, 51 of 1996;
- The Municipal Finance Management Act, 2003;
- The Municipal Structures Act, 1998

The Constitution Act, 51 of 1996 ("the Constitution")

The Constitution is supreme law, and all other law is subject to it. Any law inconsistent with the Constitution is of no force and effect, to the extent of its inconsistency. The Constitution therefore serves as the overall framework within which the statutory and common law rules and principles of South Africa operate and may be challenged. Accordingly, the Constitution, in its chapter 7 (seven), is the primary founding legislation for municipalities in South Africa. This means that all municipalities in South Africa derive their rights and powers to exist and govern from the Constitution. In Particular, section 151 (3) of the Constitution states as follows,

“A municipality has the right to govern, on its own initiative, the local government affairs of its community, subject to national and provincial legislation, as provided for in the Constitution.”

According to our interpretation, the project that the PLM seeks to embark upon entails the provision of infrastructure and accommodation to enable the PLM to undertake its mandate as contemplated in the Constitution. In this regard, section 156(1)(a) of the Constitution provides that *“a municipality has executive authority in respect of, and has the right to administer the local government matters listed in Part B of Schedule 4 and Part B of Schedule 5...”*. One of the matters listed in Part B of Schedule 4 of the constitution relates to municipal public works only in respect of the needs of municipalities in the discharge of their responsibilities to administer functions specifically assigned to them under this Constitution or any other law.

As can be seen from the afore-going, municipalities like the PLM do enjoy the constitutional entitlement to embark upon infrastructure development projects that are aimed at assisting them to carry out their mandate in terms of the Constitution. Furthermore, in terms of the Constitution, municipalities have the power to administer matters such as housing and others relating to management of development projects within their areas.

The executive and legislative authority of a municipality is vested in its municipal Council. Certain functions of a municipal Council may not be delegated, namely the passing of by-laws, the approval of budgets, the imposition of rates and other taxes, levies and duties, and the raising of loans (section 160 of the Constitution). All questions concerning these non-delegable matters (ie passing of by-laws, approval of budgets, imposition of rates and other taxes, levies and duties, and raising of loans), are determined by a decision taken by a municipal Council with a supporting vote of a majority of its members (section 160 of the Constitution). In respect of other Council decisions, a majority of the members of a municipal

Council must be present before a vote may be taken on any matter. Accordingly, to the extent that the envisaged Project entails the provision of a municipal support service through a private sector party, a resolution enabling such an arrangement would have to be passed by the PLM Council, to give legitimacy to the process. In previous correspondence to the PLM, we have requested copies of the council resolution authorising pursuit of the Project and are still awaiting this document.

Section 155(1) of the Constitution states,

“There are the following categories of municipality:

Category A: A municipality that has exclusive municipal executive and legislative authority in its area.

Category B: A municipality that shares municipal executive and legislative authority in its area with a category C municipality within whose area it falls.

Category C: A municipality that has municipal executive and legislative authority in an area that includes more than one municipality.”

Section 155 goes further to prescribe in sub-section 2 that national legislation must define the different types of municipality that may be established within each category. In order to achieve this purpose, the Municipal Structures Act, 117 of 1998 (“Structures Act”) was enacted.

The Municipal Structures Act, 1998

The aims and objectives of the act are stated as being the following,

“To provide for the establishment of municipalities in accordance with the requirements relating to categories and types of municipality; to establish criteria for

determining the category of municipality to be established in an area; to define the types of municipality that may be established within each category; to provide for an appropriate division of functions and powers between categories of municipality; to regulate the internal systems, structures and office-bearers of municipalities; to provide for appropriate electoral systems; and to provide for matters in connection therewith.”

From our reading of Part A and Part B of chapter 1 of the Structures Act as well as its aims and objectives as indicated above, and section 155(1) of the Constitution, it would appear that the PLM is a Category B municipality, as it shares municipal executive and legislative authority in its area with a category C municipality within whose area it falls.

Municipal Finance Management Act, 56 of 2003 (“the MFMA”)

It is important to mention at this point that there are generally 3 (three) instances where a municipality might seek to provide service through external means. These instances are as follows:

- Where a municipality, for whatever reason, seeks to enlist the services of a third party for the performance of its own municipality service;
- Where a municipality seeks to engage a third party for the performance of municipal activities incidental to the effective performance of a municipality's functions and the exercise of its powers. In other words, municipal support services; and
- Where a third party or private sector party uses municipal property for its own commercial purposes.

In order to determine which category the PLM Project falls under and which legislation is applicable, one would have to have regard to the nature of the Project

and, in particular, PLM's aims and objectives in undertaking the Project. The Provision of accommodation falls under the category of municipal support services. In view of the fact that the PLM seeks to enter into a contractual arrangement for the provision of student accommodation, the PLM needs to conduct a feasibility study as contemplated in section 120(4) of the Municipal Finance Management Act, 56 of 2003.

Projects involving the performance of a "municipal support activity" and "the use of state property by a private party for its own commercial purposes" are only governed by the MFMA. As mentioned above, if it wishes to embark on such projects a municipality is required to undertake a feasibility study in terms of section 120(4) of the MFMA.

It is on this basis that we come to the assumption and/or conclusion that the PLM Project's feasibility study in terms of which this legal due diligence report is being prepared has been commissioned in compliance with, and as directed by, section 120(4) of the MFMA. In terms of section 120 of the MFMA, it is only after a feasibility study has been undertaken that the accounting officer / municipal manager of PLM may approach the municipality for a council resolution authorising the Project.

In the event of any conflict between a provision of the MFMA and a provision of any other legislation in force that regulates any aspect of the fiscal and financial affairs of municipalities and municipal entities, the provisions of the MFMA prevail. Below, we set out a summary of those provisions of the MFMA that will be relevant to a project of this nature. These provisions relate to municipal decision-making, budgeting and borrowing, capital projects, the provision of security, PPPs, multi-year contracts and other relevant provisions. Thereafter, we discuss the potential institutional arrangements for the Project in more detail as well as the legal requirements relating to supply chain management / procurement of the Project, and BEE requirements.

5.6.4. The Impact of the MFMA on Decision-Making Powers of Municipalities

As mentioned above, the Constitution limits the extent to which a municipal Council may delegate certain municipal decisions. The powers that are expressly non-delegable in terms of the Constitution are those relating to the passing of by-laws, the approval of budgets, the imposition of rates and other taxes, levies and duties, and the raising of loans. Those decisions must be taken by a majority of members of the Council.

Certain other decisions and actions that may be relevant to the Project are required, in terms of the MFMA, to be taken by a resolution of the Council. These include the following:

- Approval of capital projects, including the total cost thereof (see section 19(1)(b) of the MFMA);
- Approval of contracts that will impose financial obligations on the municipality beyond the three years covered in the annual budget for that financial year (see section 33(1) of the MFMA
- Approval of debt agreements (see section 46(2)(a) of the MFMA);
- Decisions relating to security for municipal debt obligations (see section 48 of the MFMA); and
- A decision in principle regarding the entering into of a Long-Term Lease by a municipality, on completion of the feasibility study relating thereto (see section 120(6) of the MFMA).

It must also be noted that in terms of section 117 of the MFMA, no councillor of a municipality may be a member of a municipal bid committee or any other

committee evaluating or approving tenders, quotations, contracts or other bids, nor attend any such meeting as an observer.

As mentioned above, where a municipality enters into a contract that will impose financial obligations on that municipality beyond the three years covered in the annual budget for that financial year, section 33 of the MFMA requires that certain additional measures be taken, before such a contract is concluded. A contract contemplated by this provision could be a building contract (if it will extend for a period exceeding the three years covered in a budget), or a concession agreement that will bind the municipality for a period up to 25 years. We have not yet seen the Value Assessment report which would give an indication of the Project duration but our assumption is that the operational phase of the Project will take place for a period longer than 3 years.

5.6.5. Contracts Having Future Budgetary Implications

Section 33 of the MFMA, referred to above, and may apply to the Project runs for a period longer than three years.

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The municipal manager must, at least 60 days before the meeting of the municipal Council at which the multi-year contract is to be approved, in accordance with section 21A of the MSA (which deals with the manner and form of communications by a municipality to its local community) –

- Make public the draft contract and an information statement summarising the municipality's obligations in terms of the proposed contract;

PPPF5/2014: FEASIBILITY STUDY FOR LAND USE

– STUDENT ACCOMMODATION

- Invite the local community and other interested persons to submit to the municipality comments or representations in respect of the proposed contract; and;
- Must solicit the views and recommendations of the national treasury and the relevant provincial treasury; and the national department responsible for local government (being the department of cooperative governance and traditional affairs).

Furthermore, the municipal council must take into account –

- The municipality's projected financial obligations in terms of the proposed contract for each financial year covered by the contract;
- The impact of those financial obligations on the municipality's future municipal tariffs and revenue;
- Any comments or representations on the proposed contract received from the local community and other interested persons; and
- Any written views and recommendations on the proposed contract by the national treasury, the relevant provincial treasury, and the national department responsible for local government.

The municipal council must adopt a resolution in which—

- It determines that the municipality will secure a significant capital investment or will derive a significant financial economic or financial benefit from the contract;
- It approves the entire contract exactly as it is to be executed; and
- It authorises the municipal manager to sign the contract on behalf of the municipality.

It should be noted that, in terms of section 33(2), the procedure described above does not apply to contracts for long-term debt, contracts for categories of goods as may be

prescribed by regulation, contracts below a certain prescribed value or to employment contracts.

5.6.6. Review of Project Documents and Advice Thereon

The key project information and documents the legal team would like to peruse and give advice on are listed below:

- Restrictions on the title deeds – we would need to peruse title deeds for the sites that were chosen to determine if there are any restrictions and / or endorsements on the document that that have a negative effect on the Project.
- Council Resolutions – to the extent that there are any Council Resolutions and other spatial development documents approved by the municipality in relation to the Project, we would like to peruse those and give our advice thereon. The document furnished to us at this stage appears to authorise a spatial development framework, which includes eradication of informal settlements, amongst other things. We are aware that one of the objectives of the Project is to put an end to the scenario where some students are currently accommodated in informal settlements due to a shortage of proper housing.
- Zoning and Town Planning – We need to have zoning and town planning information on the site(s) chosen for development of the facility to see if there are any conditions imposed by PLM that might militate against the proposed development.
- Land claims – We will engage with the Provincial Land Claims Commissioner to determine if there are any land claims registered in respect of the site.
- Illegal Occupants – We are not aware if there are illegal occupants on the site. This is important to note as, in the event that there are any illegal

occupants on the property any time before commencement of the project, the municipality would have to follow the processes set out in the Prevention of Illegal Eviction Act, amongst others in order to evict such occupants.

- Geo Tech Conditions – we will peruse the relevant geo-technical reports to assess if the site's geo-tech condition requires precautionary measures to be put in place during construction, e.g. foundation, whether the site's geo tech has any fatal flaws and whether there are any storm water and/or drainage issues that impact the site. Having said this, a prospective property developer should obtain a copy of the geo-tech investigation report and, to the extent necessary, they should conduct their own investigation to satisfy themselves about the site conditions.
- Traffic Impact Issues – This entails an assessment of the chosen site and design to determine if there is a need to conduct a traffic impact study which, amongst other things, will guide potential service providers in connection with traffic ingress / egress designs.
- Bulk services – The information provided to us at this stage is that the municipality will be responsible for bulk infrastructure on the site.
- Environmental Impact Assessment ("EIA") – at this stage we are not aware if there are any EIA issues to be concerned about on the chosen site(s).

At this stage we are of the view that the municipality has legal authority to undertake the Project and that, in so doing, it is entitled to enter into contractual arrangements with private sector entities on the basis that the private sector entities finance, design, build and operate student accommodation facilities on municipal-owned land. The municipality will have to follow applicable legal prescripts in relation to making municipal land available for private sector property development purposes and will have to ensure that it passes the requisite Council Resolutions to enable such development and such alienation of municipal land for this purpose.

6. CONCLUSIONS ON NEEDS ANALYSIS PHASE & WAY FORWARD

There is a clear and vast need for student accommodation in Polokwane. In particular:

- There is a need for a student village that not only provides accommodation but other facilities that enhances the quality of learning environment for students.
- This would include facilities such as Wi-Fi, laundry services, security, transport and other such services.

The ownership of land by the Municipality is a very strategic position to be in, given the opportunities it provides to the Municipality on how it can structure these developments in the most optimal manner.

The needs and preferences of the identified institutions may be slightly varied and require a differentiated approach for each stakeholder:

- While all institutions acknowledge the dire need for student accommodation, Tshwane University of Technology (“TUT”) has expressed a specific objective to ultimately own the envisioned student accommodation facility. This may require that a specific land parcel is demarcated for this specific project, to be separate from the rest of the facility, in the event that the project goes ahead and both parties (the Municipality and the University) find commonality in partnering on this project.

The need for student accommodation is so vast that the envisaged 1,000-bed accommodation facility may not be sufficient for the Polokwane area. **In this instance we recommend that the Municipality consider the following:**

- **Expansion of the scope of the project to design concept drawings for a larger accommodation facility of 5,000 beds to be implemented in a phased-approach.**

The findings indicate that engagements with several institutions may have to be a continued process to build momentum on the project. **In this regard the following is recommended:**

- **The TA and the Municipality to form a Project Task Team that will be responsible for all future meetings with the relevant institutions**
- **A proposal to be drafted and submitted to Capricorn FET College and Tshwane University of Technology on the intended project and to formalize the collaboration with the institutions**

The next steps for the project, in addition to executing on resolutions from the above recommendations, is to develop designs for the project, taking the affordability limits into account, and to recommend to the Municipality project designs and costings that would be most suitable for this project.