



**LIMPOPO**

**PROVINCIAL GOVERNMENT**  
REPUBLIC OF SOUTH AFRICA

**Department of Local Government & Housing**

**FINAL REPORT**

**OF**

**THE TASK TEAM**

**DEPARTMENT**

**OF**

**LOCAL GOVERNMENT AND**  
**HOUSING**

**22 MARCH 2005**

# **FINAL REPORT FROM THE TASK TEAM**

## **1. INTRODUCTION**

The former MEC for Local Government and Housing, Ms Machuene Rosina Semenya appointed this Task Team to look into matters pertaining to housing.

The assignment was completed during the reign of the new MEC, Ms Maite Nkoana – Mashabane as it is now filed.

The Task Team submitted two interim reports, which are now consolidated as a single report for easy reference.

## **2. MEMBERS**

The Task Team consists of the following members:

1. Mr L.M. Mahlangu (Premiers Office)
2. Senior Superintendent M.S. Komape (South African Police Services)
3. Mr M. Sematle (Local Government and Housing)
4. Mr M. Mamabolo (Local Government and Housing)
5. Mr M. Bvuma (Local Government and Housing)
6. Mr A. Mbedzi (Local Government and Housing)

The Task Team had the powers to co-opt additional members to balance the gender equity and strengthen its capacity. The following members were co-opted:

1. Ms Thabiso Phintsi
2. Superintendent M.J. Mogodi (South African Police Services)
3. Inspector M.J Thaba (South African Police Services)

There were individuals who were engaged by the Task Team for resources that would be needed in the process of carrying out this mandate. They were Mr F. Maphutha and Mr M.S. Thobakgale.

Mr N.M. Mamabolo was assigned to do all the secretarial work and co-ordinate administrative back up.

There were certain problems caused by a lack of administrative back up. Most members were in full time employment in the public service and it was difficult for them to allocate full time to the assignments of the Task Team although most of them did their best in the circumstances.

## **3. TERMS OF REFERENCE**

The terms of reference of the Task Team are the following:

1. To receive and analyse allegations and complaints on corruption and fraud.

2. Assist reducing allegations to writing and collect relevant evidence by conducting interviews with the affected persons or whistleblowers or other methods.
3. Recommend to the MEC on whether those allegations and complaints are authentic and should be followed by an investigation by law enforcement agencies.

These terms of reference were spelled out to the media by the former MEC during the first media briefing and the inauguration of the Task Team.

The media statement contained an invitation to persons who had concerns relevant to this process to interact with the Task Team through Mr M.S. Thobakgale on (015) 295 6851 Fax No (015) 295 2836 Cell No 082 8744875.

#### **4. TIME FRAME**

The Task Team was expected to submit an interim report by the end of August 2004.

The first interim report was submitted to the former MEC in time but the Task Team requested the MEC for an extension of time because there were other phases of investigations, which were still to be undertaken such as public hearings and inspection of sites where RDP houses were build.

It became clear that this assignment needed more time than it was contemplated initially because the Task Team could not deliver a qualitative end product if it did not accomplish the following stages

- Interview the complainants in public hearings;
- Visit and inspect the sites where RDP houses were built to verify the quality of houses build or not build at all;
- Verify who the developers are and interview them on performance or non-performance of their contractual obligations;
- Interview the officials in charge of housing processes and determine the bottlenecks, which hamper prompt completion and delivery of quality houses.
- Verify payments or non-payments to developers who might have completed or not completed their assignments. After conducting public hearings and inspections, the Task Team had planned to interview the developers, the suppliers and the officials in the Department and affected Municipalities to comply with the rule of natural justice of audi alteram parterm (literally translated means to give the other parties an opportunity to answer or refute the allegations made against them).

This process lived through a change of Executive Council portfolios by the Premier. The Task Team had to prepare a second interim report to enable the former MEC to brief and hand over this process to the new MEC.

The final report has to be submitted to the MEC before the preparation and submission of her budget speech.

## **5. MODALITIES FOLLOWED TO CONDUCT THE ENQUIRY**

The Task Team adopted the following sequence in carrying out its mandate: -

- 5.1. first meeting of members of the Task Team was held on 29 July 2004 to discuss the terms of reference and chart the way forward. The Task Team agreed to take statements and hear oral evidence (not under oath) in case it has to conduct public hearings. Less formal procedures were followed.
- 5.2. the Task Team members agreed to take an oath of secrecy and committed themselves in writing. These documents are filed of record.
- 5.3. the Task Team made reference to the Draft Anti-Corruption Strategy on the proposed operating models and the application of the methodology.
- 5.4. the Chairperson directed a memorandum to Mr M.S. Thobakgale requesting for minimum requirements to be provided to the Task Team for administrative support.
- 5.5. the Task Team would collate all relevant information on complaints /allegations referred to the Department by affected persons or companies.
- 5.6. the Task Team would work on the basis of assigning each member to analyse the complaints referred to herein and canvass *inter alia* the following minimum information: -
  - 5.6.1. precisely where the matter is arising;
  - 5.6.2. find out full names and contact details of any person who will give details of the problem;
  - 5.6.3. suggest written statements from complainants which should be submitted to the Task Team before formal evidence or formal hearing;
  - 5.6.4. availability of witnesses to render oral evidence should be raised with such witnesses with the view of holding public hearings, when necessary;

- 5.6.5. the gist of the type of complaints e.g. corruption, fraud or maladministration should be verified for the purposes of classification of matters;
- 5.6.6. the prevalence of the incident or complaint in that area should be determined to enable the Task Team to decide whether to visit the area or not;
- 5.6.7 each member assigned on a matter has to report back to the Task Team for full discussion of the matter and ratification to make sure that the Task Team does not abdicate its functions to an individual instead of the collective.

Public hearings where statements were taken from the complainants and sites visited to inspect the quality of houses were added as a complimentary mode of investigations.

The Task Team had intended to invite the media to each public hearing and site visit but the media failed to honour our invitations. the communication section in the Department failed to assist in this process. This is one are, in the administration of the Department, which must be checked.

The Task Team had intended to be accompanied by the project managers to each site inspection but they only accompanied the Task Team to only a few areas, as it will appear in the report.

We needed the attendance of the project managers to compile expert reports on complaints pointed out to us on bad quality of construction of houses so that those reports should form part of our investigations. The Task Team realized this predicament and resorted to taking photos of the houses in the areas subsequently visited.

## **6. INVESTIGATIONS**

The investigations commenced on the premise of reading through all the correspondence directed to the MEC's office.

Individual members of the Task Team were assigned tasks, as indicated above and were required to report back to the joint sitting of the Task Team to analyse the information obtained.

The following cases were considered: -

### **6.1 FILES DEALING WITH MISSING FIREARMS**

More than 100 files dealing with firearms, which went missing in the Department as far back as during the era of the Transvaal Provincial Administration (TPA) before 1994 were presented.

## **FINDINGS**

These matters were not covered by the terms of reference and they were thrown out of hand.

## **RECOMMENDATIONS**

No recommendations were made in this matter.

### **6.2. RDP HOUSES ATTACHED IN LIEU OF DEBTS IN MUSINA**

There is a report about a micro lender who has attached RDP houses in lieu of micro loans, which the beneficiaries are unable to repay. The micro lender is now proceeding to attach the houses of beneficiaries. The Department obtained a legal opinion from the State Attorney's Office in Pretoria.

The State Attorney gave advice on this matter and made reference to Section 10 of the Housing Act, 107 of 1977.

## **FINDINGS**

The Task Team agrees with the legal opinion from the State Attorney and quotes the excerpts verbatim as follows: -

***“Section 10B of the Housing Act 107 of 1997, provides that notwithstanding any provision to the contrary in any other law it shall be a condition of every housing subsidy granted to a person that his successors in title or creditors are prohibited to sell or otherwise alienate the property unless it has first been offered to the provincial housing department at a price not greater than the subsidy which the person received for the property.***

***Such an offer must in terms of section 10B (2) be in writing and shall be accepted or rejected by the MEC within sixty days from receipt thereof.***

***Section 10B(6) compels the Registrar of Deeds to make such endorsements on the title deeds of any dwelling or site and such entries in his or her registers as may be necessary to indicate that the provisions of section 10B (1) apply to the property.***

***Section 10B (7) forbids any transfer of the property in respect of which section 10B (1) applies to another person than the provincial government unless the Registrar of Deeds is provided with a certificate, signed by the head of the department, to the effect that such property has been offered for sale to the provincial department of housing in terms of section 10B (1) and that the offer has been rejected.***

***Act 107 of 1997 does not have a provision, which deals with the non-compliance with section 10B (1). It is however clear from section 10B (7) that the Registrar of Deeds cannot give transfer of the property unless he is satisfied that the property has been offered to the department of housing.***

***The creditor of a beneficiary of a housing subsidy can in our opinion therefore attach the property of the debtor. He however cannot sell it unless he complies with section 10B (1). If he does not first offer the property in writing to the department of housing he cannot give transfer of the property because he will not be able to satisfy the Registrar of Deeds that section 10B(1) had been complied with.***

***We are thus of the opinion that as long as the Registrar of Deeds complies with the provisions of section 10B (6) (a) and (7) the interests of the housing department are protected.***

***The interest of the housing department is in our opinion further protected by the provisions of rule 43 of the Magistrate's Court Act, which deals with execution against immovable property, and notices that have to be published. To act ex abundanti cautela we suggest that the department regularly study the Government Gazette''***

## **RECOMMENDATIONS**

1. The Department should implement the provisions of Section 10 of the Housing Act, 107 of 1997 and put administrative mechanisms in place to monitor this process.
2. The Department should not only check the Government Gazette for notices required by rule 43 of the Magistrates Court Act but also the local newspapers because the judgment creditor is required to give notice in such newspapers as well.
3. The department should consider bringing applications for rescission of judgement on the basis that the Department has an interest in these matters by virtue of protecting the amount spent as subsidy to build those units and indicate that they need to file interpleader summons. This process will protect the interests of the beneficiaries and their successors in title bearing in mind that once a subsidy and appears on the data base, no further housing grant can be allocated to such beneficiary. The interests of government will also be protected by this process

Towards the end of the process, a letter was directed to Head of Department indicating all findings and recommendations (including these) to enable him to make inputs and comments.

The Head of Department, in terms of a memorandum, which is in the hands of the Task Team, responded as follows:

1. The provisions of Section 10 of Housing Act, 107 of 1997 are being implemented as recommended.
2. The process of engaging the office of the Registrar of Deeds on registration of pre-emptive rights have been commenced with as recommended.
3. The process of checking publications in the Government Gazette and local news papers have been commenced with or not.
4. The process of making applications for rescission of judgements as recommended is supported by the Department. It is not clear if is commenced with or not. This process has time limits prescribed by the rules of Court. It is therefore important to act promptly on these matters

## **FINDINGS**

1. It would appear that the legal services in the Department is not up to speed with their function of protecting the interest of the Department and advising accordingly because appropriate steps, as recommended above should have been implemented long before this Task Team was set up.
2. It would appear that there is lack of capacity to deal with matters that require or are expected from a section dealing with legal services in the Department.

## **RECOMMENDATIONS**

A process of restructuring and skills audit should be embarked on to streamline capacity and skills in the legal service unit. This process should be part of the overall restructuring process and capacity building in the entire Department.

### **6.3. COMPLAINT BY RIVERSIDE ENTERPRISE J/V DANIEL LIZBETH & ANGES CONSTRUCTION.**

This company directed a letter of complaint to the MEC dated the 05 April 2004. They claim that they contested for an unspecified project No TC 0034 under the Capricorn District Municipality (CDM). They further allege that they were short listed and recommended by the consulting engineer but they were not considered for approval.

A member of the Team was assigned to probe the matter further and report back to the

Task Team.

## **FINDINGS**

The letter from the Senior Manager in the Office of the MEC to the Office of the Mayor does not engage the issue; it merely passes over the problem.

## **RECOMMENDATIONS**

1. The Head of Department should request the CDM to provide him with documents with guidelines on the procurement policy and processes of the CDM.
2. The Head of Department should instruct the Senior Manager to engage the problems of this nature and at least seek clarity from the procurement division of the CDM.
3. The Head of Department should create a registry office, which receives all correspondence, and channel same to relevant officials, (including himself and senior managers) to deal effectively with responses to such correspondence.
4. Officials should alleviate the MEC from the duty of dealing with correspondence because she is not a functionary but a political head who deals with policy issues and not administration.

## **6.4 REQUEST FOR APPROVAL OF RATES AND TAXES BY PREMIER FROM MODIMOLLE MUNICIPALITY**

A letter from Modimolle Municipality dated 01 June 2004 directed to the Premier is requesting the approval of the Premier to remit the amount, which is due and should be refunded to one Mr T. de Klerk. The request is directed to the Premier in terms of section 32(2) of the Local Government, Local Authorities Ratings Ordinance, 1977 (Ordinance 11 of 1977).

The aforesaid letter was redirected by the Administrative Secretary of the Premier to the MEC. The Senior Manager in the Office of the MEC redirected this letter to the Senior Manger, Legal Services in the Department.

## **FINDINGS**

1. It appears that Mr De Klerk has a legitimate claim against the Modimolle Municipality because he was refunded an amount of money based on incorrect rates.
2. The Municipal Manager followed the correct process by invoking the provisions of Section 32(2) of the Local Government, Local Authorities Ratings Ordinance, 1977 by directing the letter to the Premier for approval

of the rates and categories of people who are entitled to such refunds or payments.

3. The Administrative Secretary in the Premier's office had two options in dealing with the matter.
  - 3.1. direct the correspondence to the Provincial Legal Services in the office of the Premier or the Special Advisor to verify the legal position and advise the Premier on the response he should make or
  - 3.2. to act as he did by sending the letter to the Appointments Secretary in the office of the MEC in which case the Senior Manager correctly directed the letter to the Senior Legal Manager, Legal Services in the Department

### **RECOMMENDATIONS**

1. The Senior Legal Manager, Legal Services in the Department should verify the legal position, communicate with the Provincial Legal Services in the office of the Premier or the Special Advisor to agree on an appropriate response which must be signed by the Premier and be forwarded back to the Municipal Manager in Modimolle Municipality.
2. The refund made to Mr. De Klerk by Modimolle Municipality, based on incorrect rates, causes a serious indictment against the officials dealing with this matter. Their competency becomes questionable.
3. The MEC should raise such matters with Municipalities in the IGR forums and probe the competence or capacity issues of Municipalities.

### **6.5. COMPLAINT FROM MR M.N. MASHABANE O.B.O. MUILA VILLAGE ABOUT LACK OF ELECTRICITY AND DEVELOPMENT.**

A letter from Mr M.N. Mashabane dated 11 June 2004 was directed to the Premier complaining about lack of electricity and development in the area. This letter was addressed by the office of the Municipal Manager of Makhado Municipality to the Premier's Office.

The Senior Manager in the MEC's office redirected the said correspondence to the Mayor's office, Makhado Municipality for further handling and report on new developments.

The matter was given to one of the members of the Task Team for further probing. Contact was made with one Mr V.C. Viljoen, a Director in the Strategic and Economic Development of Makhado Municipality who advised that he will forward a report on the IDP's of the Municipality which establishes a need for housing as demanded by most people in the area.

## **FINDINGS**

Mr Viljoen advances an argument that housing is the obligation of the Department whereas the Municipality or Eskom has to put up electricity in the area. The last project to be covered was ward 35.

According to Mr Viljoen, Eskom is supposed to electrify the rest of the areas in their Municipality in terms of their contract.

The Makhado Municipality was compelled to spend +-R23 million to electrify one of the areas, which was supposed to be electrified by Eskom. The Task Team is awaiting the written representation from Mr. Viljoen and the IDP's in a disc form for further consideration. This matter can be pursued by the Department and be sorted out.

It is strange why the management in the Department did not follow this process to enquire and resolve this matter (like the Task Team did) instead of sending the correspondence in circles. This clogs the delivery process, which precipitates such complaints.

## **RECOMMENDATIONS**

1. The Head of Department should obtain a copy of the contract between Eskom, National Government, Provincial Government and Local Government to verify the role of each tier of government and enforce it. This should be the approach in respect of all municipalities.
2. Mechanisms should be put in place to check all processes where delivery is the responsibility of the Department to ensure that all parties meet their obligations.
3. The Head of Department should make a follow up on the resolutions taken by the Premier- Mayors Forum held on 27-28 January 2005 where the Minister of Minerals and Energy, Eskom and Municipalities addressed this problem.
4. Audit reports of all Municipalities should be obtained and be studied carefully in regard to such expenditures, which should be regularised.

### **6.6. INVESTIGATIONS AND FINDINGS OF ALLEGATIONS OF CORRUPTION AGAINST PETER MOROKANE**

Mr Peter Morokane is an official assigned to housing secretariat. The Task Team received a report on internal investigations and allegations of corruption against the said Mr. Morokane.

The Task Team assigned one of its members to probe the matter further and report back to the Task Team.

## **FINDINGS**

It would appear that the allegations made regarding Mr. Morokane are of a criminal nature and the South African Police Services can better handle them.

## **RECOMMENDATIONS**

1. The Head of Department should refer this matter to the SAPS and consider internal disciplinary action against Mr Morokane.
2. The Risk Management Division in the Department should come up with measures and strategies to streamline the whole systems in the Department to prevent such occurrences.

### **6.7. REQUEST FOR TOP UP FINANCE TO COMPLETE 64 HOUSING UNITS: WARD 7**

The Municipal Manager of Mutale Municipality, T.G. Netshanzhe, directed a letter dated 23 June 2004 to the Head of Department.

The letter indicates that on or about 3 December 2003 the Department transferred an amount of R590 054-64 to Mutale Municipality for the construction of 64 units by a company called Faith Integrity in 2000. It states further that since then the prices of building material have escalated and this caused a shortfall, which made it difficult for the company to proceed further with this project.

The amount of R590 054-64 was used to purchase building material. The company requests for an additional amount of R345 000-00 to complete the project.

The Task Team delegated one of its members to investigate this matter.

## **FINDINGS**

1. It is, at this stage, difficult to find any justification, in terms of the National Housing Code for the allocation of additional funds.
2. It would appear that the National Housing Code has shortcomings, in certain applications, which make it difficult for the Department to address some of the problems encountered in the implementations process.

## **RECOMMENDATIONS**

1. It will be advisable to arrange a meeting with the developer on this matter to clear all the issues herein. It is important to hear the side of the developer as to what caused the delay in constructing the units, which then led to the escalation of prices for the building material. This case may set the pace to unlock similar problems in this industry.
2. It is also important to hear the side of the Department about certain operational matters, which might be the cause of such problems, not only in this matter but also generally in the housing industry. The allocation of the geo-tech allowance,

the due diligence or otherwise of the inspectors from the Department, the processing of claims by the Department to pay the developers etc. are some of the problems, which must be probed.

3. The Head of Department should identify such shortcomings and advise the MEC for suggestion and input to the Minister of Housing.
4. The views of the developers and the suppliers on the supply chain must be obtained.
5. The procurement procedure of acquiring building material in such instances must be probed. It would appear that there are certain suppliers who are charging some developers exorbitant prices for building material or alternatively tie them to stringent contracts, which make it difficult for developers to survive in this industry.
6. Areas where all stakeholders hold a view that there is an indication of corruption must be probed by the SAPS.

The Task Team could not reach this phase of investigations. This can, however still be

pursued by management and other law enforcement agencies (e.g. forensic auditors)

and the MEC should be briefed on the outcome.

#### **6.8. COMPLAINT BY AFRICA'S SOCIAL DEVELOPMENT ORGANISATION FROM BA-PHALABORWA**

A non-governmental organisation called Africa's Social Development Organisation wrote a letter of complaint against Ba-Phalaborwa Municipality alleging corruption and cover-up and directed same to the President's Office, Minister for Provincial and Local Government, Premier's Office and MEC's Office.

The Minister for Provincial and Local Government redirected the matter to the MEC's Office for the further handling.

#### **FINDINGS**

It became clear to the Task Team that the allegations made were broad and vague to enable us to make concrete findings.

There were issues, which needed to be verified such as

1. statements from complainants and other relevant people in regard to the allegations.
2. precise allegations of corruption and cover-ups, if any,

These complainants were invited to the public hearing when the Task Team visited the area.

## **RECOMMENDATIONS**

This matter was held in abeyance until further details, which were supposed to be obtained from the public hearing in Ba-Phalaborwa.

### **6.9. NYARHI DEVELOPERS VS THE DEPARTMENT**

Nyarhi Developers has instituted two separate legal actions wherein they claim for damages arising out of unilateral repudiation of a contract contrary to clause 7 of the contract. In the first claim (case No 16807/03) the developer and the Department entered into a written agreement in terms of which the Department appointed the developer to build 400 units at Malamulele. The department would pay, progressively on claims, the amount of R8 120 000-00 for the development of the infrastructure and payment of the professionals. The developer would hire those professionals and pay them from the money allocated by the Department. The development of the infrastructure would be completed within 18 months from date of signing the agreement. The developer hired the professionals and paid them according to work done until November 2002 when the department stopped providing money to the developer.

This caused the project to come to a halt. The Head of Department demanded a refund of the amounts already advanced to the developer. The developer accepted the repudiation and is proceeding to Court to confirm the cancellation of the agreement and claim for consequential damages amounting to R24 837 220- 00 being loss of profits. The breakdown is demonstrated on paragraph 9.1 et seq. of the summons. Further claims are based on the fact that the actions of the Department caused the developer to lose creditworthiness and his vehicles amounting to R1095 000-00 were repossessed and he also suffered loss of dignity and self-esteem in the sum of R2000 000-00.

The Department filed a plea and raised defences to the effect that: -

1. The powers, duties, rights and obligations of the erstwhile Northern Province Housing Development Board now vest in the MEC due to amendments brought to section 92 of the Housing Act and therefore the relief sought by the developer cannot be obtained against the Board.
2. The Department attacks the variation of the contracts of 400 houses upon which the developer claims to be unacceptable because it is in conflict with clause 7 of the contract, which the developer invoked to rely on reputation.

3. The Department agrees that there was an agreement between itself the developer and that an amount of R895 000-00 in respect of engineering designs, electrical designs and survey cost was paid to the developer.
4. During the flood disaster in the year 2000, the financing of all middle income housing projects were relocated to flood disaster projects which resulted in the suspension of such agreements and the entering into new agreements with such developers in respect of flood relief housing projects.
5. On or about 10 July 2000 the Department decided to revive the implementation of the middle-income housing projects.
6. The agreement in respect of the middle-income houses to be erected in Malamulele was terminated by an agreement relating to the relocated flood relief housing project, which was entered into between the developer and the Provincial Housing Board on the 7 September 2000. The developer developed the units stipulated in this agreement and was fully compensated.
7. During early 2002 the Department decided to revive the implementation of middle-income housing project at Malamulele but approved the erection of only 400 units at a total value of R8 120 000-00.
8. The developer was appointed subject to the finalisation of a written agreement, which was never finalised, entered into and concluded between the parties.
9. Because the middle-income housing project at Malamulele had not been successfully re-introduced a meeting was held between the Department and the developer to refund the amount of R895 000-00 paid previously for the development of the infrastructure not later than 10 January 2003. Apparently the Department demanded payment of this amount in writing. It looks like the Department has not filed a counter-claim for this amount.
10. The rest of the claim is challenged by the Department as disclosing no cause of action and making a bare denial of the allegations.

This matter was given to one of the members of the Task Team to interview the developer and the legal adviser in the Department.

It transpired that the matter was in the High Court on 5 October 2004 and 25 January 2005.

The Plaintiff submitted a letter to the Task Team dated 26 January 2005 to the effect that the matter has reached a stage where the State Attorney has realized that they do not have a case against his company and they want to

discuss settlement. A copy of a letter confirming such discussions between Counsels for the parties was enclosed in that letter.

The letter further makes serious statements to the effect that if the settlement proceeds in the Plaintiff's favour, the Head of Department would have caused further fruitless expenditure running into millions which issue must be investigated by the Task Team and be reported to the MEC.

## **FINDINGS**

1. There are disputes of facts on the matter in particular as raised above.  
The Court may have to interpret and give a meaning to words like "relocate" and "suspension of the project" in relation to the terms and conditions of the written and signed agreement.
2. The Court may have to consider the communication of both parties by letters, and decide whether it is in compliance or breach of clause 7 of the agreement.
3. The Task Team did not have the opportunity to peruse the agreement, which the Department entered into between itself and the developer on 7 September 2000, which terminated the middle income housing to be erected in Malamulele because such agreement does not seem to exist. If this agreement does not exist, then the developer's argument may be stronger than the arguments raised by the Department.
4. The matter appears to be ripe for round table discussion between the legal Representatives of the parties.

The Head of Department had a discussion with the Chairperson of the Task Team and he intends to set up a committee, which will assist the State Attorney and Counsel for government in the impending negotiations for settlement.

## **RECOMMENDATIONS**

1. The Head of Department should pursue the route of a settlement of this matter as proposed by both Counsels.
2. This matter should be handled with extreme urgency as it has enormous financial implications, which are also affected by the end of the financial year period now at hand.
3. The conduct of the Head of Department, the legal advisors in the Department, which are put on the spot by the Plaintiff's allegations to have caused fruitless expenditure may be dealt with by means of internal processes prescribed by the Public Service Act and Regulations and the Public Finance Management Act at the instance of the MEC and the Premier after the outcome of this case.

## **6.10. THE SECOND CASE (CASE NO 14957/04) OF NYARHI DEVELOPERS AGAINST THE DEPARTMENT INSTITUTED RECENTLY**

The developer alleges that there was a written agreement concluded between himself and the Northern Province Housing Development Board now substituted by the MEC on 30 July 2000.

The developer was appointed to develop 500 low cost houses at Mofongodi Village at R16 000-00 per unit upon which the MEC would pay to the developer a sum of R8 000 000- 00 as the total subsidy amount for the project.

During 2000 the developer was requested to suspend the continuation of the project because there was a need to address flood disaster relief housing.

The developer alleges that a letter written to him dated 10 July 2000 indicated he would return to the Mofongodi project after the disaster flood project. The developer alleges that when he was ready to resume the Mofongodi project, the MEC failed to reinstate him to proceed with the project. He wrote letters to the Department and there was no response. After the developer had engaged Attorneys to direct letters to the Department the Department responded in a manner of repudiating the agreement contrary to the provisions of clause 7 thereof. The developer accepted such repudiation and claimed damages in the sum of R2 940 900-00, which is set out in paragraph 9.1. et seq. of his summons.

The Task Team is advised that the Department is defending this claim.

### **FINDINGS**

1. The Department has filed a Notice of Intention to defend.
2. The merits of the case are more or less similar to the merits of the first case.

### **RECOMMENDATIONS**

The Task Team recommends that this matter be handled in the same manner as the first case.

## **6.11. COMPLAINT BY THE WILCASS GROUP (PTY) LTD ABOUT CORRUPTION AND ABUSE OF POWER WITHIN THE DEPARTMENT OF LOCAL GOVERNMENT AND HOUSING**

A company of a developer called the Wilcass Group directed a letter to the Premier dated 5 April 2004 indicating that they have been involved in construction of RDP houses in the province since 2000.

The developer indicated that he completed building these houses in less than three months during the flood disaster housing project as a result of which he was presented with the National Housing Merit Award.

They were not given any project since then until they held a meeting with the Head of Department. They were subsequently given 305 houses from the bag log of houses, which were abandoned by other developers. The subsidy was initially at R16 000 per unit and was later increased to R23 000 but in their case this amount was not increased. As a result they ran into a debt of R1, 8 million because the Head of Department said if they abandon the project, they are not going to get any further allocation. The developer alleges that he was not allocated any houses to date. To his surprise developers who could not finish their projects were given more allocations. This letter requests the Premier's Office to launch an investigation into this matter.

A member of the Task Team was mandated to handle this matter and arrange a hearing, as the developers were willing to submit evidence and testify. This approach has changed due to time constraints as mentioned above.

The member of the Task Team communicated with one Mr. Wilson Mkhari who then indicated that he was no longer interested in this process because the matter is now in the hands of their lawyers. Subsequently, the former demonstrated interest in the process and referred the Task Team to his lawyers for further information.

## **FINDINGS**

Some members of the Task Team had discussions with Mr. Wilson Mkhari's lawyers and they were presented with a copy of an affidavit made by one of the lawyers in terms of which the Head of Department was making a loan from Wilcass Group (PTY) LTD for an amount of R165 000-00. This affidavit is in the hands of the Task Team.

The affidavit states that before the Head of Department could receive the loan amount of R165 000-00 he was supposed to sign an acknowledgement of debt with the lawyers. The Head of Department did not pursue this matter further and therefore there was no acknowledgement of debt signed by the parties.

## **RECOMMENDATIONS**

This matter should be referred by the MEC or Premier to the SAPS for further probing because it has elements of an attempted crime of corruption, fraud and bribery. Further investigations will indicate how this matter should be proceeded with.

## **6.12. COMPLAINT OF BRIDGE OF AGREEMENT**

The Task Team received a letter from the administrative Secretary to the Premier dated 02 February 2005 enclosing a copy of a letter from Mr. M.E Mabasa dated 17 November 2004 which was directed to the President.

The complainant is a disabled person and owner of Bindulani Building Construction. In 2001 he was engaged as a sub-constructor to Makhanyile Construction CC to build 20 RDP houses at Malamulele, Thulamela Municipality. He engaged himself in debts by obtaining building material from hardwares and employing labourers. He was not paid by Makhanyile Construction and he is now under tremendous pressure from his creditors.

## **FINDINGS**

1. There is a lack of understanding from our people on some business transactions such as sub-constructing with a developer and direct contracting with government and who is liable to pay them.
2. The sub-contracting transaction is a private matter between the complainant and the company, which sub-contracted him. It will be difficult to rise the resources of government to redress this problem.

## **RECOMMENDATIONS**

1. The contracts between the Department and the developers should be improved to take into account and protect the interest of sub-contractors and labourers engaged by developers because the people have an impression that they are short changed by government.
2. The Department can act as mediator and refer the complainant to the Consumer Protector in the Department of Economic Development, Environment and Tourism to resolve this matter through the Consumer Court in terms of Consumer Affairs (Harmful Business Practices) Act 8 of 1996.
3. The Department should put in place an education campaign to educate the developers and the people engaged in this industry about business ethos, ethics and various business relationships and their implications.

### **6.13. COMPLAINT BY DIMAKATSO TSHABALALA**

Ms Dimakatso Tshabalala was allocated an RDP house (number 8855 Zone 5 Polokwane ) by Mr. Kenny Sebola of Kenro Construction. She was given a letter of allocation and completed certain forms with the assistance of Kenro Construction.

The complainant later discovered that the house she was allocated to is registered in the name of Mr. S.B. Mahlangu

She reported the matter to her ward Councilor Calvin Shilajoe, Mr. Teffo, and Mr. Mahlatsi in the Department and Mr. Maremane in the Municipality.

When she checked on the database in the Department, the name of one Magadzi appeared several times in the computer as the person who captured and entered the details of the complainant and other beneficiaries. The complainant picket up information that this Magadzi is not working in that section and he should not have accessed the information unless he used PIN Codes of other people in the Department.

## **FINDINGS**

1. The system of compiling beneficiary lists and the allocation of houses to rightful beneficiaries seems to be irregular and encourages nepotism, corruption and short changing rightful beneficiaries.
2. There is a strong suspicion that there were people who pilfered with the data and information to manipulate the allocation of houses in the Department. The appearance of the name of Magadzi on several transactions raises serious concerns of possible corruption in the Department.

## **RECOMMEDATIONS**

1. The Head of Department must provide the MEC with the authentic beneficiary list compiled by the developers and the Municipality in the area to verify if the process of allocating houses was conducted fairly and in a legal manner.
2. The Head of Department must submit this case to the SAPS for full investigation. The complainant's tel. no is 082 645 3875 ID No 7411290323080.

### **6.14. INCOMPLETE RDP HOUSES IN MAKHADO WARD 26 AND 27**

A letter dated 12 January 2004 addressed to the Premier was handed to the Task Team by Adv. Tommy Ntsewa for handling.

It is a complaint about incomplete RDP houses in Wards 26 and 27 Tshakuma Village in Makhado Municipality

The developer is Selamolela: NW Civils. He was supposed to build 100 houses since the year 2000. These houses are abandoned at a foundation level.

According to the letter, people in the area are disgruntled and have lost confidence in the system of government.

The authors of the letter of complaint are requesting the Premier to intervene. They are Matodzi A.N. Tel 082854 8119 and Munyai Tel 082 464 9353

## **FINDINGS**

The developer has not complied with his obligations

## **RECOMMENDATION**

1. In regard to houses, which are not completed by the developers, the Department must engage through their legal services, the services of the State Attorney to assess the viability of enforcing the contractual obligations of the developers. The developers may be required to repair the defective work or complete the outstanding work. Alternatively the Department may consider claiming for damages from the developers who have not gone under.
2. The National Department of Housing has announced a campaign to engage the NHBRC and KPMG to follow up on such matters and recover the losses of government from defaulting developers. The Department has to engaged with the National Department in this process.
3. In regard to money owed to workers who were employed by the developers, this is a private matter, which will make it difficult to justify the use of government resources to redress. Unfortunately the image of government is tainted by this misdemeanour. There is legitimate expectation from the people to get jobs from government. The perception is that these are government projects. The Department may have to mediate between the developers and the unpaid workers just to restore the confidence of the people in government.
4. The Department should put in place a system which manages the conduct of the developers and make provision for remedial steps to be implemented in case the developers does not pay their workers or fails to complete their projects or construct houses with defects. The possible role and intervention of institutions like the NHBRC, the Department of Labour and well-drafted contracts to bind such developers (e.g. to retain some of their balance of payment to redress such issue) should be looked into.

5. Copies of contracts between the Department and the developers engaged in this area do not cover details of terms and conditions expected from a comprehensive service level agreement. The Department should engage the State Attorney through the legal services in the Department, to review the format of such contracts. The Department should make a comparison with other contracts used in other provinces such as Gauteng.
6. The financial issues pertaining to the amounts allocated to each project, the amount claimed and paid by the Department to developers, the balance of the amounts allocated to the project, if any, should be referred to forensic auditors for verification.

#### **6.15. "CORRUPTION AT ITS WORST IN LEPELLE NKUMPI MUNICIPALITY"**

This is a heading of a memorandum directed to the Task Team by one Mr Silas Mashabane concerning allegations of corruption in Lapelle Nkumpi Municipality.

The memorandum indicates that;

1. Despite the fact that there is R15000-00 grant allocated to the beneficiaries for an RDP house, the developer and some Councillors make individual beneficiaries to pay approximately R1490-00 for a site.

A copy of the memorandum with annexures substantiating these allegations is in the hands of the Task Team.

2. Some of the beneficiaries who were promised building material (to build on their own) never received any building material or money to that effect.

The records at the Department indicate that money was paid out to the developer.

3. There are cases reported to the police but to date there is nothing investigated and reported to the complainants by the police.

The reference numbers of the cases are as follows:

Cas 35 /1 /2001  
Cas 36 / 1 /2001  
Cas 37 /1 /2001

Captain Makgaleng and Superintendent Mabye investigate these cases.

There is also a list of beneficiaries and their ID numbers attached to the memorandum, which is also in the hands of the Task Team.

4. There was an amount of money paid to the developer in 1999 for a claim submitted for RDP houses, which were in actual fact not constructed at all. A docket under CAS No 73 /08 /2002 was also reported to the police but to date there is no progress made in the investigations. The complainant suspects collusion and bribery between the suspect and the police.

There is a list of complainants with their house numbers and ID Numbers attached to the memorandum and submitted to the Task Team

5. The RDP houses built in Lebowakgomo are of poor quality and do not conform to the basic requirements
  - the size of the houses is 36m<sup>2</sup> instead of 40m<sup>2</sup>
  - houses are build with no foundation and most of them have cracks e.g. Houses No 16 Unit. S No 47 Unit S and No 307 Unit S
6. Sixty percent of the RDP houses in Lebowakgomo are occupied by “ghost” beneficiaries and the people who do not qualify for such houses e.g. professional workers.
7. The RDP houses built at Ga-Mathabatha by a company owned by one Mr Champ Sepuru have collapsed and people were injured and hospitalised as a result of that carnage. The said company was allocated more housing projects despite the fact that: -
  - It builds houses of lowest quality
  - It does not pay its works
  - Beneficiaries are forced to provide water and building sand
  - It does not complete its projects
8. Some Councillors are collecting rentals from occupants of RDP houses through their agents. There is reference to house No 73 Unit R, which belongs to government but a Councillor is collecting rental of R900-00 per month. There is

also House No 328 in terms of which one J.M. Mafokoane is collecting rental of R50-00 per month.

## **FINDINGS**

The Task Team made the following findings:

1. There is *prima facie* evidence to show that certain individuals abuse the housing process to benefit themselves by selling sites, which are already subsidised by government.
2. There is *prima facie* evidence to show that certain individuals abuse the housing process to benefit themselves by allowing individuals who are not legitimate beneficiaries to occupy RDP houses.
3. It would appear that there are “ghost” beneficiaries or people who do not qualify for allocation of RDP houses that are occupying these houses contrary to the policy of government. The example cited is that of people who are qualified professionals
4. Criminal cases reported by complainants with docket reference numbers are not pursued.
5. The developers in Lebowakgomo has not delivered building material to the beneficiaries but probably claimed for payment from the Department.
6. The same developer in Lebowakgomo has build houses of poor quality and of 36m<sup>2</sup> instead of 40m<sup>2</sup>. House No 307 Unit S, No 47 Unit S and No 307 Unit S have been cited as examples.
7. The developer in Ga-Mathabatha called Ba Ga-Champ owned by one Mr Champ Sepuru
  - Builds houses of poor quality
  - Does not pay its workers
  - Forced beneficiaries to provide water and building sand
  - Fails to complete its projects

## **RECOMMENDATIONS**

1. The Head of Department should instruct the Project Management to do an inspection with a few members of the Task Team and compile a technical report on the condition of the houses in the area. The Project Managers of the Municipality must also be taken on board during this exercise. All areas must be covered in the report. This report must be submitted to the MEC.
2. The Head of Department should direct letters of enquiry to the local police station seeking reports and progress made on investigations in criminal cases referred in the report.
3. Copies of correspondence must be kept and forwarded to the Provincial Commissioner of police for record keeping and possible follow up
4. The Head of Department should report constantly to the MEC on this matter.

### **6.16. THUSANANG CONSTRUCTION**

This case was referred to the Task Team by Rob Dick Attorneys on behalf of Thusanang Construction CC.

This matter relates to a claim instituted by Thusanang Constructions in the High Court against Greater Tubatse Municipality claiming the sum of R 614 637-91 for service rendered to build a sports and recreation facility for the municipality playground.

### **FINDINGS**

It would appear that this matter falls outside the terms of reference of the Task Team and more so it resides in the Department of Sport, Arts and Culture.

### **RECOMMENDATION**

We recommend that the matter be directed to the legal services in the Department to communicate with Rob Dick Attorney and the Department of Sport, Arts and Culture for further handling of this matter.

### **6.17. DEVELOPMENT COST ANALYSIS**

The Task Team came across a document market Appendix B and titled Development Cost Analysis. It was apparently annexed to each agreement signed by the developer and the Department.

This document deals with a breakdown of the subsidy amount allocated to each house and details the breakdown in respect of each item, which goes into the construction of each and every house.

The document also details the specification for each item relating to the construction of each and every house.

## **FINDINGS**

This document will assist the process of conducting further audit of the quality of houses in case the Department pursues that direction as well as forensic audit in respect of the utilization of funds regarding the entire housing projects.

## **RECOMMENDATIONS**

1. The physical audit of the quality of houses, which is recommended herein, should be further compared with the document on costs analysis to determine whether the subsidy amounts were utilized correctly and to the benefit of government and the beneficiaries.
2. The forensic audit, which is recommended in respect of all projects, should have reference to this document or similar documents to enhance its investigations.

## **6.18. ANONIMOUS SUBMISSIONS**

The Task Team received several complaints and allegations pertaining to gross irregularities in administration from unanimous sources.

## **FINDINGS**

The aforesaid documents could not be verified with the sources of information because of their anonymity. They will, however, be submitted to the MEC for further handling.

It would appear that some people in the Department and members of the public are afraid to come out in the open about their complaints.

## **RECOMMENDATIONS**

1. The anonymous documents of complaint will be handed over to the MEC for further handling.
2. The MEC should use her discretion, after obtaining good reliable advice if necessary, on how to deal with these matters and where possible refer them to relevant law enforcement agencies for probing.

## **7. PUBLIC HEARINGS**

Public hearing were conducted in some places in the Province, namely Mochemi in Blouberg Municipality, Namakgale in Ba-Phalaborwa Municipality, Musina in Musina Municipality, Thogoaneng in Polokwane Municipality, Ga-Kgapane in Greater Letaba Municipality, Hoedspruit in Greater Tubatse Municipality.

There are places which still need to be visited such as Mokopane, BelaBela, Nobody, Lulekani, Mhinga Village but due to time constraints these areas could not be visited.

## **7.1 PUBLIC HEARING IN BLOUBERG MUNICIPALITY**

This hearing was inspired by the complaint about maladministration or corruption against a Councillor in Senwabarwana (Bochum).

In attendance were the following:

1. Headmen Mochemi who welcomed the Task Team and all present.
2. Councillor Sylvia Seomane in charge of Housing. She also chaired the proceedings.
3. Councillors Ramolesane, Lehong, Montane, Thamaga and Matlala.
4. Ward Committee Members.
5. Political groupings.

The Task Team was accompanied by the event management staff from the Department who acted as an advance team and made all the preparations. The Technical Management team which accompanied the Task Team for inspections of quality on houses were Mr Michael Lamola from the Department and Mr Dan Madisa from Blouberg Municipality.

The hearing must be viewed against the background of the investigations, which were already conducted, by some of the Task Team members who verified the complaints raised in a letter from the concerned group. A member of the Task Team visited Broadhill Village (Ga-Mochemi) to interview relevant people concerning the complainants raised.

The first interview was with Selina Mathibela. Selina Mathibela is the eldest daughter of Ms Ngakwana Thamaga (ID No: 321119 0170 084). Selina Mathibela reported that the Councillor Thamaga came to Ms. Ngakwana Thamaga and took her identity document for the purpose of applying for an RDP house for her since her house was demolished by the floods in the year 2000.

Ms. Ngakwana Thamaga (who is supposed to be the beneficiary) has never seen or went to the RDP house because Councillor Thamaga has put her daughter, Mokgadi, with her children in the RDP house. At the time of the interview, it transpired that the said Mokgadi was in Gauteng and the house was occupied by her children and Mokgadi's brother.

The beneficiary, Ms Ngakwana Thamaga cannot talk and hear properly but she indicated that she needs to take occupation of her house.(referring to the RDP house).

The whole transaction has raised a number of concerns. Winnie Mathibela (daughter to Selina; grand-daughter to Ngakwana) raised a concern about who is going to be the beneficiary after the demise of their grandmother – Ms Ngakwana Thamaga.

A member of the Task Team also interviewed one Ashley Mochemi who mentioned that there are many houses that need to be investigated because they seem not to be allocated to rightful beneficiaries or alternatively there is some nepotism in the allocation of such houses. When they raise issues with Councillor Thamaga, she does not treat them with respect and she boasts of her power of being government herself. This matter was reported to the Mayor and there was no action taken to resolve it.

Councillor Thamaga was also interviewed. She indicated that Selina did not want to stay with her mother (Ngakwana Thamaga) as a result of which her mother was once raped because she is staying alone in the house. She further reported that Winnie couldn't stay with Ms Ngakwana Thamaga because she is irresponsible. Councillor Thamaga agrees that the legitimate beneficiary is Ngakwana Thamaga.

During the site visits, the Task Team was taken to the abovementioned house. It was first locked and nobody was on site. Later the old woman Ms Ngakwana Thamaga came to open for us but she repeatedly and voluntarily kept on referring to the house as her son's house.

The Task Team was shown queries on the poor quality of the house, which were noted by the Project Manager who accompanied us for inspection.

The Task Team was also taken to a second house, which was found locked. Ashley Mochemi indicated that the occupier is always not at home and it appears that houses are allocated to people who are not desperate for accommodation and promoting nepotism because that occupier is related to Councillor Thamaga. All this was said in the presence of Councillor Thamaga who admitted that the occupier is related to both her and Ashley Mochemi and he is not staying in the house regularly because he heads cattle in the bush. A few other houses were also inspected to check their quality. The developers involved in this Municipality are:

1. Youth Enterprise Developers  
Directors  
Mbedzi A.M  
Montana Sam  
Ramusi Vusi  
Mpimpi  
Lethafi

## 2. Morgan and Creek Developers

It transpired that most of the residents from areas referred to in the letter from the mayor of Blouberg Municipality dated 11 August 2004 were not present during the public hearing. In terms of this letter, Matuku Developers was appointed in 2001 to construct 300 housing units in the following villages:

Arie  
Simpson  
London  
Taaibosch  
Eldorado  
The Cranch  
Grootpan

Matuku Developers failed to start with the project until the Department cancelled the contract. During the subsequent arrangements 200 houses were allocated to Dira Developers and 100 houses reallocated to Matuku Developers. Once more Matuku Developers has to date not started with the project.

The Municipality is requesting the Department to reallocate these 100 houses to any of the developers who are currently busy with projects within the area.

The letter from the Municipality comments on poor quality of houses and list areas affected by such poor quality and workers who were not paid by developers. They complain that the Project Managers from the Department are approving payment certificates without first inspecting the projects. They suggest the Municipality should manage quality on housing delivery by means of approving payment certificates.

The Municipality has attached a draft service level agreement between the Department and Blouberg Municipality. This agreement is already signed by the Head of Department and the Municipal Manager.

## **FINDINGS**

1. It would appear that the process of compiling beneficiary lists has to be improved. Councillors cannot and should not be selective in collecting names of individuals, especially their relatives, friends or next of kin to place them on beneficiary lists, as it is apparently the case with Councillor Thamaga.
2. The public hearing demonstrated that there is great enmity between the community duly represented by the concerned group lead by Ashley Mochemi and the Councillors. The Councillors present were more defensive than contributing openly to the course of probing issues of concern and coming up with solutions. It became clear that

the Mayor was monitoring the process by telephone and wanting an intervention for reasons unknown to the Task Team.

3. It appears that the process of compiling the beneficiary list is irregular and encourages nepotism, the least to say. This method may have sidelined those that are more in need of housing and gave preference to relatives who do not even stay in such houses.
4. The lines of communication between the residents and the Councillors seem to be undermined by negative attitudes evinced by at least Councillor Thamaga. This is one of the major causes of discontent raised by the residents.
5. Towards the end of the programme, there were counter allegations between the Councillors present and the concerned group. These counter allegations had political undertones. Most of the Councillors believed that the ANC will be undermined by the fact that Ashley Mochemi, allegedly from the DA, will abuse the platform for political statements when he has to comment about the observations made during the inspections of houses on site visits. Both Councillor Thamaga and Ashley Mochemi were given a chance to address the residents on observations made during the site visits. The Task Team managed to contain the public hearing to the business of the day.
6. People are disgruntled and divided into political factions in the area and they are joined by the youth in a campaign not to vote in the coming local government elections.
7. The Developers who were building houses in the area are the following:
  - 7.1. Youth Enterprise Developers
  - 7.2. Morgan and Creek Developers

A certificate compiled by a private company called Steenkamp and Hatting states that there was quality control in respect of the houses build by Youth Enterprises Developers which is contrary to the findings that some or most the houses were of poor quality and were built with sub-standard building material.

## **RECOMMENDATIONS**

1. The Head of Department must provide the Task Team with the authentic beneficiary list compiled by the Municipality to verify if the process of allocating houses was conducted fairly and in a legal manner.

2. The report from the Project Management team which accompanied the Task Team to the public hearing must be prepared and compared with the reports filed on progress payment for each house.
3. Communication mechanism between the Councillors and the residents should be restored forthwith and Councillors should handle the problems of residents with respect and commitment for duty.
4. The result emanating from further probing of the issues raised above will be referred to the relevant organs of State for further attention.
5. The MEC should consider ways and means of making an intervention through existing Inter Governmental Relations (IGR) structures to restore the confidence of the people in the area.

The above-mentioned findings and recommendations were made in the Second Interim Report and they still stand. The Head of Department was raised for comment and his response is incorporated herein for easy reference.

beneficiary list, as recommended, but responded as follows:

In regard to the Recommendation 1, the Head of Department did not submit the beneficiary list, as recommended, but responded as follows:

*“In the past, when the whole process of housing development commenced, Developers submitted the housing development proposals to the Provincial Housing Development Board (PHDB). The process of development of land and beneficiaries was part of Developers responsibility, with less engagement of local authorities.*

*This process has since been revoked and municipalities are the ones responsible for identifying development areas and beneficiaries. The department is currently advancing that there should be standing Housing Beneficiaries Waiting Lists with all municipalities based on the need priority of the municipal citizens.”*

## **FINDINGS**

No new findings are made regarding the new input from the Head of Department.

## **RECOMMENDATIONS**

1. The MEC should direct this process to be part of issues to be taken on board during the restructuring process of systems and management in the Department.
2. The process proposed by the Head of Department should be synergised with the processes currently proposed by the

Municipalities. All the proposals should be part of the restructuring process referred to above.

3. In regard to houses, which are not completed by the developers, Morgan Greek Developers and Youth Enterprising Developers, the Department must engage through their legal services, the services of the State Attorney to assess the viability of enforcing the contractual obligations of the developers. The developers may be required to repair the defective work or complete the outstanding work. Alternatively the Department may consider claiming for damages from the developers who have not gone under.
4. The National Department of Housing has announced a campaign to engage the NHBRC and KPMG to follow up on such matters and recover the losses of government from defaulting developers. The Department has to engaged with the National Department in this process.
5. In regard to money owed to workers who were employed by the developers, this is a private matter, which will make it difficult to justify the use of government resources to redress. Unfortunately the image of government is tainted by this misdemeanour. There is legitimate expectation from the people to get jobs from government. The perception is that these are government projects. The Department may have to mediate between the developers and their unpaid workers just to restore the confidence of the people in government.
6. The Department should put in place a system which manages the conduct of the developers and make provision for remedial steps to be implemented in case the developers does not pay their workers or fails to complete their projects or construct houses with defects. The possible role and intervention of institutions like the NHBRC, the Department of Labour and well-drafted contracts to bind such developers (e.g. to retain some of their balance of payment to redress such issue) should be looked into.
7. Copies of contracts between the Department and the developers engaged in this area do not cover details of terms and conditions expected from a comprehensive service level agreement. The Department should engage the State Attorney through the legal services in the Department, to review the format of such contracts. The Department should make a comparison with other contracts used in other provinces such as Gauteng.

8. The financial issues pertaining to the amounts allocated to each project, the amount claimed and paid by the Department to developers, the balance of the amounts allocated to the project, if any, should be referred to forensic auditors for verification.
9. The Department has embarked on the head-count of houses as recommended earlier. The Head of Department should, however, verify if this exercise was not done earlier because the Task Team got hints from some of the officials to the effect that this exercise was apparently embarked on earlier by a company called Home Solutions.
10. The Department should verify, from the national data base, who the legitimate beneficiaries are in respect of the houses which are in dispute between the concerned group and Councillor Thamaga and report back to the MEC

## **7.2 PUBLIC HEARING IN THOGOANENG TOWNSHIP POLOKWANE MUNICIPALITY –19 NOVEMBER 2004.**

This public hearing was inspired by the complaints received from Ms Monyamane Christina Mashaba who was allocated an RDP house in Thogoaneng Township but could not access it. The First Interim Report deals with this matter and the following preliminary findings were made.

### **FINDINGS**

1. It would appear that there are people occupying the RDP houses illegally. Some of the those illegal occupants are working for the Polokwane Smelters.
2. The Department has already mandated the Polokwane Municipality to handle this matter because it has the relevant capacity.
3. It would appear that:
  - 3.1. the establishment of the township did not comply with the required procedure.
  - 3.2. the Polokwane Municipality is not prepared provided the basic infrastructure services in the area before the proclamation of the township process is regularised .
  - 3.3. the Department has applied to the Deeds Office in Pretoria to have the area proclaimed under RT29.
  - 3.4. there are allegations that there is a criminal element involved in the area to protect the illegal occupants of these RDP houses from being evicted.

The Task Team is approaching the information on this case with great caution and circumspection until details are authenticated by further evidence be it oral or in writing.

In the light of the preliminary findings made and especially the possible criminal involvement, the Task Team engaged the services of the SAPS, First Aid and Rescue Services from the Polokwane Municipality to be present and hold surveillance.

The following people attended the public hearing:

1. Councillor Lina Masombuka
2. Councillor Maria Kubayi
3. Headman Jack Chuene

Statements were obtained from the members of the public and reduced into writing.

## **FINDINGS**

1. On the basis of the statements obtained from the public hearing, the preliminary findings of the Task Team in the First Preliminary Report still stand.
2. It became clear from the complainants that since the beneficiary list was compiled, the allocation of those houses was not done in a fair manner. The complainants indicate that there are a lot of strangers who occupy the RDP houses as a result of arbitrary allocation. They confirm the allegation that some of the illegal occupants are probably working for Polokwane Smelters and they originate from other areas other than around Thogoaneng.

## **RECOMMENDATIONS**

1. The Head of Department must obtain and submit the original master plan of the township from the Technical Division in the Department to enable the Task Team to probe the process followed to establish the township.
2. The Head of Department must obtain a report from Mr. Matlala Maremane of the Polokwane Municipality on the process, which was initially followed to establish a township of Thogoaneng and the current status of the situation in providing the basic infrastructure services in the area.
3. The Head of Department should obtain and submit a report from the Legal Services in the Department on progress made to regularise Proclamation RT29 processes with the Deeds Office in Pretoria.

4. The Head of Department should obtain and submit the agreement between the Department and the developer, which stipulates the total amount of housing units, which were supposed to be build in the area.
5. The Head of Department should engage his resources from the Department to do a physical count of the total number of houses build by the developer because it appears to be incongruent with the total number of houses erected. This should be done in consultation and in the presence of officials from the Municipality.
6. The Head of Department should verify and submit a report why the numbering of houses is not in sequence and appears not to be in accordance with the master plan because whoever is allocated a number extinguishes the original stand number painted by the developer and paints his or her own number which is not in sequence with the rest of the numbers in that area.
7. The Head of Department should submit a clear audit and verification of the beneficiary list with the actual people now allocated those houses.
8. There should be a carefully prepared raid embarked on for the purpose of verifying the actual occupants of those houses. The SAPS and SANDF should be engaged in this exercise.

The abovementioned findings and recommendations were made in the Second Interim Report and they still stand.

The Head of Department was raised for comment and his response is incorporated herein for easy reference

In regard to Recommendations, 1,2 and 3 the Head of Department responded as follows:

*“ Currently the General Plan has not been approved. There is no Service Level Agreement between the Developer and Polokwane Municipality. There is no consent from the Land Owner (Traditional Authority) as there was no agreement through Community Resolution. The community is not in favour of alienating the portion of land to municipality, as they would ‘loose the land’. Several meetings were held between the department, municipality, Developer Chuene Traditional Authority and Kgoshigadi (our correction) with intention to resolve the impulse. The Chuene Traditional Authority and Kgoshigadi (our correction) propose to have “Rural Town” which does not exist.*

*A memo was submitted to the MEC in 2004 for this proposal and it was rejected. (Refer to the attached memo as Annexure 2.1). A follow-up meeting was held with the Town Planners (One of the Developer’s professional) of this project.*

*The Developer's professional made submission complaining about non-payment for the service he rendered (Layout Plan), in 2004. This meeting involved the Senior Manager in the MEC and undertook to take the issue with the MEC. The department could not pay because of no community resolution, non-finalisation of Township Establishment and Service Level Agreement.*

*The process of Township Establishment was not properly followed in terms of the Less Formal Township Establishment Act, 1991 as amended. The Developer was supposed to have obtained proper Community Resolution.*

*The current negotiations with Chuene Traditional Authority and Kgoshigadi to get Community Resolution should be finalized. The issue should be further pursued with the intervention of the MEC.*

## **FINDINGS**

1. It would appear that a rural housing project could have been the best option than the current township project because it would have obviated the problem of obtaining a Community Resolution and the complications of the township establishment processes, which have not been compiled with.
2. A memorandum referred to as Annexure 2.1 was not supplied to the Task Team, no further comments could be made in this regard.
3. It would appear that the current problem could have been obviated if the Department could have followed the procedure of establishing a township in terms of the Less Formal Township Establishment Act, 1991.
4. The Task Team is in possession of an agreement between the Department and the developer, which do not cover details of terms and conditions expected from a comprehensive service level agreement.
5. The professionals, who were engaged by the developer, were apparently not paid for the services rendered in producing a layout plan because there was no Community Resolution, no finalisation of a township establishment process and service level agreement. This was probably caused by the failure of the Department to follow proper procedures of establishing a township.
6. The Department still holds the developer responsible on certain obligations which apparently arise from the agreement referred to above

## **RECOMMENDATIONS**

1. The Department, through its legal services, must submit this problem to the State Attorney for a legal opinion, which should indicate steps, to be followed to correct this problem. The services of a State Attorney with knowledge of property law and conveyancing should be given preference in dealing with this matter.
2. The Head of Department, who is expected to advise the MEC on administrative issues, should rely on the legal opinion from the State Attorney referred to above to advise and lead the MEC in taking the process forward. The legal opinion may assist both the Head of Department and the MEC in taking the negotiation process with the Kgoshigadi forward.

In regard to Recommendation 4 to 5 the Head of Department submitted a response in a form of a report from the Project Management, which is filed of record.

## **FINDINGS**

1. The report refers to the counting of houses, which was conducted on 26 /01 /2005 by the Project Management. It is alleges that the members of the Task Team and a representative from the Polokwane Municipality could not attend the inspections.
2. The report indicates that a total number of houses build is 338. The houses completed are 337 and 1 house has its roof blown by the storm.
3. The contract between the Department and the developer does not specify the number of houses to be build by the developer. It only requires the developer to develop a township in terms of the Less Formal Township Establishment Act, 1991. It would appear that the developer failed to fulfil the terms and conditions of this agreement because he could not deliver a township as expected.

## **RECOMMENDATIONS**

1. Copies of contracts between the Department and the developers engaged in this area do not cover details of terms and conditions expected from a comprehensive service level agreement. The Department should engage the State Attorney through the legal services in the Department, to review the format of such contracts. The Department should make a comparison with other contracts used in other provinces such as Gauteng.

2. The financial issues pertaining to the amounts allocated to each project the amount claimed and paid by the Department to developers, the balance of the amounts allocated to the project, if any, should be referred to forensic auditors for verification.
3. The Department has embarked on the head-count of houses as recommended earlier. The Head of Department should, however if this exercise was not done earlier because the Task Team got hints from some of the officials to the effect that this exercise was apparently embarked on earlier by a company called Home Solutions. The results of the head-count should be reconciled with the total amount paid to the developer.
4. The Department should put in place a system, which manages the conduct of the developers, and make provision for remedial steps to be implemented in case the developers not pay their workers or fail to complete their projects or construct houses with defects. The possible role and intervention of institutions like the NHBRC, the Department of Labour and well-drafted contracts to bind such developers (e.g. to retain some of their balance of payment to redress such issue) should be looked into.

In regard to Recommendation 6 and 7 the Head of Department responded as follows:

*“ The project has no General Plan as outlined 2.1 above. The number on the draft layout plan is regarded as reference pending approval of the General Plan by the Surveyor General. A meeting was held at Chuene Tribal Authority with the Developer and Traditional Authority was held and it was agreed that (FMS) Developer would submit the list of beneficiaries. It was further agreed that a joint audit would be done of the beneficiaries I the houses, which could not be fulfilled because some stakeholders were not available. The information was supposed to be submitted to the department. More information should be acquired from the Developer and former Ward TLC Councillor (July Mokonyama) on the allocation of the houses to beneficiaries.”*

## **FINDINGS**

1. It would appear that the response corroborates the fact that the Department or the developer should have followed the correct procedure of establishing a township in terms of the Less Formal Township Establishment Act, 1991
2. There is no General Plan. The number on the draft layout plan is regarded as references pending the approval of the General Plan by the Surveyor General. This process has invariable opened the floodgates for houses possible fraudulent allocation of houses to people who are not legitimate beneficiaries.

3. It would appear that the developer has not submitted some of the essential information to the Department

## **RECOMMENDATIONS**

The recommendations made in the Second Interim Report still stand in particular the following:

1. The Head of Department should engaged his resources from the Department to do a physical count of the total number of houses build by the developer because it appears to be incongruent with the number of houses erected. This should be done in consultation and in the presence of official from the Municipality.
2. The Head of Department should verify and submit a report why the numbering of houses is not in sequence and appears not to be in accordance with master plan because whoever is allocated a number extinguishers the original stand number painted by the developer and paints his or own number which is not in sequence with the rest of the numbers in that area.
3. The Head of Department should submit a clear audit and verification of the beneficiary list with the actual people now allocated those houses.
4. There should be a carefully prepared raid embarked on for the purpose of verifying the actual occupants of those houses. The SAPS and SANDF should be engaged in this exercise.

In regard to recommendation 8 the Head of Department responded as follows:

*“ This exercise has not commenced, as it difficult to get beneficiaries during day. A Joint Audit should be done and engaged Safety and Security and Liaison as part of the Audit Team. A joint meeting should be convened by the department to draft Schedule of Visit with all stakeholders in February 2005. A further reference should be made on the initiated process to conduct Evaluation of Housing Project in the province (1994-2003 March).”*

## **FINDINGS**

It would appear that this process was embarked on without planning carefully. The drafting of a schedule to conduct this audit seems to be a brilliant plan. A convenient time to get the occupants of these houses should be chosen when compiling this schedule.

## **RECOMMENDATIONS**

It is recommended that the Department should proceed with the process after planning carefully as recommended earlier

### **7.3. PUBLIC HEARING IN BA-PHALABORWA-NAMAKGALE WARD.08. 25 NOVEMBER 2004.**

This public hearing was inspired by a letter of complainant from a non-governmental organisation called Africa's Social Development Organisation (ASDO) from Ba-Phalaborwa.

This NGO complained about the Ba-Phalaborwa Municipality alleging corruption and cover-ups. They directed the same complaints to the Presidents Office, Minister for Provincial and Local Government, Premier's Office in Limpopo and to the MEC for Local Government and Housing.

The Minister for Provincial and Local Government redirected the matter to the MEC for Local Government and Housing for further handling.

Broad allegations against individuals were made in the letter without details of the acts of corruption or cover-ups. This NGO was invited to the public hearing but they did not turn up.

The people who attended the public hearing were:

1. Councillor Thandi Mazibuko in charge of housing.
2. Mr R. Nkwinika a Ward Committee member.
3. Councillor Matome Malatji send an apology.
4. Mr. Mpholo, a Project Manager for Housing.
5. Members of all ward committees.

The Project Manager – Mr. Ratshitanga from the Department did not attend this public hearing.

Statements were taken from the members of the public and reduced into writing.

The essence of the statements of the complainants was about the poor quality of houses, which have been build but not completed by the developers.

The people also complained about having registered for houses but up to date they have not been allocated.

### **FINDINGS**

1. There are houses, which appear on the master application database but have not been erected.

2. There are a number of people who have since registered for the allocation of houses but up to date no allocations were made to them.
3. There are houses, which appear to have been build with poor quality building material.
4. The company, which was involved in the construction of houses, is Bakwevhu Construction headed by Mr S. Ramagoma.

## **RECOMMENDATIONS**

1. The Head of Department should submit a clear audit and verification of beneficiary list with the actual people now allocated the RDP houses.
2. There should be a carefully prepared raid embarked on to do a physical probe of the actual occupants. SAPS and SANDF may be engaged in this exercise.
3. The Head of Department should submit a list of reports from each developer on the houses allocated, houses build, houses outstanding and claims submitted by the developer and payment of same if any.
4. The Head of Department should instruct the Project Management to do an inspection with a few members of the Task Team and compile a technical report on the condition of the houses in the area. The Project Managers of the Municipality must also be taken on board during this exercise. All areas must be covered in the report. This report must be submitted to the MEC.

The abovementioned findings and recommendations were made in the Second Interim Report and they still stand.

The Head of Department was raised for comment and his response is incorporated herein for easy reference

In regard to Recommendation 1 and 2 the Head of Department indicated that the exercise of doing an audit and verification of a beneficiary list with the actual people now allocated the RDP houses has not commenced. It is difficult to get the beneficiaries during the day. He proposes a joint meeting to be convened by the Department to draft a schedule to visit all stakeholders in February 2005. He suggests that a further reference should be made on the process initiated to conduct the evaluation of the housing project in the province between 1994 to March 2003.

## **FINDINGS**

The drafting of a schedule to conduct this audit seems to be a brilliant plan. A convenient time to get the occupants of these homes should be chosen when compiling this schedule.

## **RECOMMENDATION**

It is recommended that the Department should proceed with the process after planning correctly as recommended earlier.

In regard to Recommendation 3 the Head of the Department responded but indicated that the report is not finalised.

## **FINDINGS**

No findings can be made at this stage.

## **RECOMMENDATIONS**

The Head of Department should submit the outstanding report on Recommendation 3 to the MEC.

If there are houses which are allocated but still not completed the MEC should deal with the issue as follows:

1. In regard to houses, which are not completed by the developers, the Department must engage through their legal services, the services of the State Attorney to assess the viability of enforcing the contractual obligations of the developers. The developers may be required to repair the defective work or complete the outstanding work. Alternatively the Department may consider claiming for damages from the developers who have not gone under.
2. The National Department of Housing has announced a campaign to engage the NHBRC and KPMG to follow up on such matters and recover the losses of government from defaulting developers. The Department has to engaged with the National Department in this process.
3. In regard to money owed to workers who were employed by the developers, this is a private matter, which will make it difficult to justify the use of government resources to redress. Unfortunately the image of government is tainted by this misdemeanour. There is legitimate expectation from the people to get jobs from government. The perception is that these are government projects. The Department may have to mediate between the developers and their unpaid workers just to restore the confidence of the people in government.

4. The Department should put in place a system which manages the conduct of the developers and make provision for remedial steps to be implemented in case the developers does not pay their workers or fails to complete their projects or construct houses with defects. The possible role and intervention of institutions like the NHBRC, the Department of Labour and well-drafted contracts to bind such developers (e.g. to retain some of their balance of payment to redress such issue) should be looked into.
5. Copies of contracts between the Department and the developers engaged in this area do not cover details of terms and conditions expected from a comprehensive service level agreement. The Department should engage the State Attorney through the legal services in the Department, to review the format of such contracts. The Department should make a comparison with other contracts used in other provinces such as Gauteng.
6. The financial issues pertaining to the amounts allocated to each project, the amount claimed and paid by the Department to developers, the balance of the amounts allocated to the project, if any, should be referred to forensic auditors for verification.
7. The Department should embark on a head-count of houses as recommended earlier. The Head of Department should, however, verify if this exercise was not done earlier because the Task Team got hints from some of the officials to the effect that this exercise was apparently embarked on earlier by a company called Home Solutions.

#### **7.4. PUBLIC HEARING IN MUSINA – 07 DECEMBER 2004.**

This public hearing was inspired by a report from Musina Municipality about a micro lender who has attached RDP houses in lieu of micro loans in terms of which beneficiaries are unable to repay such loans.

A public hearing was arranged for the 22 November 2004 but it appeared that there were people who were not in favour of this public hearing proceeding. The date was postponed to the 01 December 2004 on receiving information that there was a march to the municipal offices, which information later appeared to be false.

The Municipality later came with a new objection why the public hearing should not be proceeded with. They indicated that they have directed a letter to the MEC raising certain issues, which must be responded to before the public hearing is proceeded with.

Ultimately the public hearing was proceeded with on the 07 December 2004 without the co-operation and assistance of the Municipal Manager, the Mayor and the Councillors. No one of them attended the hearing. The advance team from Communications pulled out the arrangements for the public hearing successfully after enlisting the assistance of the SAPS through Superintendent Nephawe from Musina police station.

The people from the township and villages attended the public hearing and submitted their complaints, which were reduced to writing.

There was a concerned group lead by one Mr Makushu, which also submitted a list of people with their ID Book numbers, who have been on a waiting list for a long time and not allocated houses.

The concerned group raised a lot of discontent with the current Councillors, Mayor and Municipal Manager. They complained about a system, which was called Musina Development Association (MUDA), which was used to collect money from residents and deposit same in the bank account of MUDA. This MUDA was created in 1994.

There were complaints about the way in which finances were managed in MUDA until the former MEC Joe Maswanganyi intervened in 2003 and this MUDA was disbanded. One Oupa Mashaba who was an employee of the Municipality was part of a group, which managed MUDA, but apparently he deflected when he was dismissed from the group without receiving any dividend on dissolution of MUDA. The said Oupa Mashaba volunteered information of corruption to the concerned group.

The concerned group reported the case to the police in or about August 2004. the following councillors were arrested:

1. Johannes Mlondo
2. Timothy Tshikhundo.

Their case is till pending in Musina Court.

The concerned group complains that the people who shared the money when MUDA was disbanded are: - The Mayor-David Phologa, Municipal Manager-Abram Liruli and Councillor Danie Mokobi.

All these people have not been arrested.

The concerned group approached Superintendent Nephawe who gave them police men who could help probe the case further. They were:

1. Mr Freddy Mokomene-072 793 7589
2. Mr Roms-082 6944 814
3. Bold- 083 9938 329

They took statements from the members of the concerned group and collected documents from the municipality offices but to date there is no progress on the investigation.

The concerned group gave all details, receipts and documents pertaining to this complaint to Mr Mbedzi A.M. who is a member of this Task Team.

## **FINDINGS**

- a. There is bad blood between the residents of Musina and their Mayor, Municipal Manager and the Councillors.
- b. The residents led by the concerned group want the matter of MUDA investigated properly and culprits be arrested and brought to book.
- c. The concerned group is disgruntled with the way Mr Mbedzi handled their matter as a government official.
- d. There is a long waiting list of people who registered for RDP houses but to date have not been allocated.
- e. Ndivhuwo Calvin Nephawe –ID No: 710202 7080 081 paid an amount of R225-00 to Councillor Oupa Mashaba in 1994 and was allocated stand number 3095. After three years he was evicted by one Phephetwe, apparently the Messenger of the Court, accompanied by the police because of a sale in execution of this RDP house arising from a micro loan. Councillor Lubengo allocated him another stand number 3543 at Mmatswale Village. This stand apparently belonged to Themba Ncube because he received statements for payment of services in the name of Themba Ncube. This case was reported in the newspapers. The concerned group wanted the MEC to intervene.

## **RECOMMENDATIONS**

1. In the First Preliminary Report, the Task Team made a clear recommendation on how the problem of attaching and selling the RDP houses in execution should be sorted out. The Head of Department should obtain a report back on how far the legal services section has gone into this case and seek for progress report.
2. In regard to the MUDA case, the Head of Department should direct a letter of

enquiry to the local police station seeking a report and progress made on investigations in this matter.

Copies of correspondence must be kept and forwarded to the Provincial Commissioner of police for record keeping and possible follow up. The Head of the Department should report constantly to the MEC on this matter.

3. The Head of Department should submit a clear audit and verification of beneficiary list with the actual people now allocated the RDP houses.
4. There should be a carefully prepared raid embarked on to do a physical probe of the actual occupants. SAPS and SANDF may be engaged in this exercise.
5. The Head of Department should submit a list of reports from each developer on the houses allocated, houses build, houses outstanding and claims submitted by the developer and payment of same if any.
6. The Head of Department should instruct the Project Management to do an inspection with a few members of the Task Team and compile a technical report on the condition of the houses in the area. The Project Managers of the Municipality must also be taken on board during this exercise. All areas must be covered in the report. This report must be submitted to the Task Team.
7. The Head of Department must submit all contracts and service level agreements between the Department and the developers in regard to all areas and demonstrate how these agreements were managed.
8. Government must embark on a strategy of restoring confidence in the residents of Musina through an IGR process, engage and improve communication between the residents and the Municipality.

The findings and recommendations referred above were made in the Second Interim Report and they still stand.

The Head of Department was raised for comment and input and he agrees with all the recommendations and indicates that the Department has started implementing same.

## **FINDINGS**

No new findings are made.

## **RECOMMENDATIONS**

1. In regard to houses, which are not completed by the developers, the Department must engage through their legal services, the services of the State Attorney to assess the viability of enforcing the contractual obligations of the developers. The developers may be required to repair the defective work or complete the outstanding work. Alternatively the Department may consider claiming for damages from the developers who have not gone under.
2. The National Department of Housing has announced a campaign to engage the NHBRC and KPMG to follow up on such matters and recover the losses of government from defaulting developers. The Department has to engaged with the National Department in this process.
3. In regard to money owed to workers who were employed by the developers, this is a private matter, which will make it difficult to justify the use of government resources to redress. Unfortunately the image of government is tainted by this misdemeanour. There is legitimate expectation from the people to get jobs from government. The perception is that these are government projects. The Department may have to mediate between the developers and their unpaid workers just to restore the confidence of the people in government.
4. The Department should put in place a system which manages the conduct of the developers and make provision for remedial steps to be implemented in case the developers does not pay their workers or fails to complete their projects or construct houses with defects. The possible role and intervention of institutions like the NHBRC, the Department of Labour and well-drafted contracts to bind such developers (e.g. to retain some of their balance of payment to redress such issue) should be looked into.
5. Copies of contracts between the Department and the developers engaged in this area do not cover details of terms and conditions expected from a comprehensive service level agreement. The Department should engage the State Attorney through the legal services in the Department, to review the format of such contracts. The Department should make a comparison with other contracts used in other provinces such as Gauteng.
6. The financial issues pertaining to the amounts allocated to each project, the amount claimed and paid by the Department to developers, the balance of the amounts allocated to the project, if any, should be referred to forensic auditors for verification.

7. The Department should embark on the head-count of houses as recommended earlier. The Head of Department should, however, verify if this exercise was not done earlier because the Task Team got hints from some of the officials to the effect that this exercise was apparently embarked on earlier by a company called Home Solutions.
8. The Department should verify on the national database who the legitimate beneficiaries are and make sure that they get properly allocated to their houses on completion.

#### **7.5. PUBLIC HEARING IN GREATER TUBATSE MUNICIPALITY, HOEDSPRUIT. 09 DECEMBER 2004.**

This public hearing was inspired by the correspondence from Greater Tubatse Municipality who complained about the Speaker who collected money from the residents in a guise that they will be provided with houses.

There were cases reported to the SAPS under the following reference numbers  
114/6/03 T.Lekubu  
115/6/03 F.Komane

There is no progress report on these matters.

The Chairperson of the Task Team also received a call from one journalist, Mr Rampuru Sefara about houses and toilets, which were incomplete in the areas of Malaeneng, Mapareng and Leboeng. We had information that one child has drowned in one of the pit toilets in Mapareng.

This hearing was attended by:

Kgoshigadi Dinkwenyane  
Headmen Mohlala  
Councillor Moagi  
Headmaster of The Local School  
Project Manager from the Department, Collins Munyai

The Task Team had an occasion to meet with Kgoshigadi Dinkwenyane and Councillor Moagi for preliminary discussions. It was clear that everybody was disillusioned about several visits and promises made by government to address the plight of the people in regard to a need for housing. The Kgoshigadi was also angry about the state of affairs but she merely spared the rod because we were messengers from government and not perpetrators of the entire problem.

The residents were reluctant to come to the hearing. We devised a strategy of making several announcements through the public address system and requested the people come nearer.

There was a range of complaints from the public, which could be summarised as follows:

1. people have registered several times since 1994 for allocation of RDP house to no avail.
2. a lot of toilets have been build by a company called Thamane Construction without building the houses.
3. the toilets referred to above cause social problems such as diseases and crime. A child has drowned in one of the pit toilets.
4. people are angry with their Municipality and claim that there is no regular communication from their leaders concerning their problems.
5. building material is lying to waste in the street and in the storerooms. The residents have to take turns in looking after the building material, which was delivered and not used for several years.
6. people complain about a lack of water and electricity.
7. people were threatening to hold the Task Team hostage until they build houses as promised several times by government.
8. there were workers and sub-contractors who worked for the developer in the area and never received payment.

## **FINDINGS**

After taking statements from the people and visiting three areas for inspection it was found that.

1. 1000 houses were allocated to a developer called Thamane Construction and sub-divided as follows:

Leboeng 500 units (only toilets were erected).  
Malaeneng 250 units (only 100 toilets were erected).  
Mapareng 250 units (only 100 toilets were erected).

2. There was material lying in the street in the form of bricks and in the storeroom in the form of cement, door frames, window frames, rafters, etc. going to waste.
3. The pit toilets pose a real danger as alleged by the complainants. The elder brother to the deceased child was found playing around the same area where his younger brother drowned.
4. The people are angry and impatient with government because they have been waiting for the building of houses for too long.
5. In the area of Leboeng, the Municipality has taken over the project and it appears to be alleviating the long outstanding problems of working towards completing the construction of houses in the area.

6. It is not clear if the Greenfield project was a wise decision in all these areas because it appears that rural housing project is a more favourable way to go in the circumstances.
7. The lines of communication between the Councillors and the residents have to be improved forth with. The people seem to be disillusioned with the non-intervention by the Kgoshigadi as well and put a subtle blame on her for neglecting their plight.
8. Kgoshogadi has appealed for mutual respect and observation of protocol between government, Municipality and the royalty in initiatives around the development of the area. It appears that there is room to improve relationship between the royalty and the Municipality.

## **RECOMMENDATIONS**

1. The Head of the Department must direct a letter of enquiry to the local police station to find out about the case reported against the Speaker and progress made to date.

Copies of correspondence must be kept and forwarded to the Provincial Commissioner of police for record keeping and possible follow up.

The Head of Department should report constantly to the MEC on this matter.

2. The Head of Department should submit a clear audit and verification of the beneficiary list.
3. The Head of Department should submit a list of reports from each developer who was engaged in these projects with the progress report on building progress and payments made to the developer (s) and the justification for such payments.
4. The Head of Department should instruct a Project Manager to do an inspection with the Project Manager from the Municipality and a few members from the Task Team to compile a technical report on the condition of the quality of houses in all the three areas. Their report must be submitted to the Task Team.
5. The Head of Department must submit all contracts and service level agreement between the Department and the developers in regard to all three areas and demonstrate how these agreements were managed.
6. The Head of Department must submit to the Task Team any form of agreement or arrangements made with the Municipality to take over the project at Leboeng and cost implications or cost transaction caused by such arrangements.

7. Government must embark on a strategy of restoring confidence in the residents of all three areas and through an IGR process engage and improve communication between the residents, the Municipality and the royalty.

The findings and recommendations referred to above were made in the Second Interim Report and they still stand.

The Head of Department was raised for comment and input and he has responded as follows

Recommendation 1 is accepted by the Head of Department and he added that Municipal Code of Conduct should be implemented against the conduct of the speaker.

The Head of Department has not reported on the progress made to date about the steps tabled in the recommendation. The Head of Department should implement those steps and report to the MEC

In regard to Recommendation 2,3 and 4 the Head of Department responded as follows

*“This is one of the blocked-project because of the land not being transferred to the Municipality (Item 28/1 Certificate, i.e. consent of the Minister of Land Affairs and Agriculture). The project could not progress in terms of building to structure because of the requirement of National Housing Code, which require transfers to be processed prior building top-structure (house)*

*Since then a decision was taken by MINMEC to build if a state land and address the issue of transfers. Based on this decision, the contract between the department and the Developer has been cancelled, because of the inflation (material increase)*

*The project has been converted into People’s Housing Process. The construction of the houses is continuing. In other villages, the Municipality is identifying beneficiaries to benefit on the 3000 units which have been approved to be completed”.*

In regard to Recommendation 5 the Head of Department attached copies of contracts relevant to each project and indicated that the projects stalled because of the land problem.

The Head of Department indicates further that the Department engaged the Developer based on MINMEC decision but the developer wanted the subsidy to be increased as the subsidy was eroded and could not enable him (the developer) to complete the project and make profit

The Department decided to cancel the contract and to cancel the contract and convert it into a PHP and appointed the Municipality to assist in the process of building houses.

## FINDINGS

No new findings are made except that documents by the Head of Department will be kept for submission to forensic auditors.

## RECOMMENDATIONS

1. In regard to houses, which are not completed by the developers, the Department must engage through their legal services, the services of the State Attorney to assess the viability of enforcing the contractual obligations of the developers. The developers may be required to repair the defective work or complete the outstanding work. Alternatively the Department may consider claiming for damages from the developers who have not gone under.
2. The National Department of Housing has announced a campaign to engage the NHBRC and KPMG to follow up on such matters and recover the losses of government from defaulting developers. The Department has to engaged with the National Department in this process.
3. In regard to money owed to workers who were employed by the developers, this is a private matter, which will make it difficult to justify the use of government resources to redress. Unfortunately the image of government is tainted by this misdemeanour. There is legitimate expectation from the people to get jobs from government. The perception is that these are government projects. The Department may have to mediate between the developers and their unpaid workers just to restore the confidence of the people in government.
4. The Department should put in place a system which manages the conduct of the developers and make provision for remedial steps to be implemented in case the developers does not pay their workers or fails to complete their projects or construct houses with defects. The possible role and intervention of institutions like the NHBRC, the Department of Labour and well-drafted contracts to bind such developers (e.g. to retain some of their balance of payment to redress such issue) should be looked into.
5. Copies of contracts between the Department and the developers engaged in this area do not cover details of terms and conditions expected from a comprehensive service level agreement. The Department should engage the

State Attorney through the legal services in the Department, to review the format of such contracts. The Department should make a comparison with other contracts used in other provinces such as Gauteng.

6. The financial issues pertaining to the amounts allocated to each project, the amount claimed and paid by the Department to developers, the balance of the amounts allocated to the project, if any, should be referred to forensic auditors for verification.
7. The Department should embark on the head-count of houses as recommended earlier. The Head of Department should, however, verify if this exercise was not done earlier because the Task Team got hints from some of the officials to the effect that this exercise was apparently embarked on earlier by a company called Home Solutions.
8. The Department should verify, from the national data base, who the legitimate beneficiaries are in respect of the houses which are in dispute.

#### **7.6. PUBLIC HEARING IN GREATER LETABA MUNICIPALITY-GA-KGAPANE –13 DECEMBER 2004.**

This public hearing was inspired by a report compiled by Councillor Masenamela about the incomplete houses in Ward 7, Greater Letaba Municipality.

We prefer to attach the report with annexures because it succinctly sets out problems experienced in these areas.

The people in the area were very angry and aggressive because they have no further confidence in the Municipality and government regarding houses.

Statements were taken from the complainants, which corroborated the contents of the report from Councillor Masenamela.

The Task Team conducted inspections on the quality of the houses and problems experienced could be summarised as follows:

1. Some of the sites have been allocated in ditches and trenches and therefore there were no houses build.
2. Some of the houses are built on what appears to be former dumping areas of the local hospital. There were visible heaps of dumped syringes, bottles, and test tubes with stained blood next to the houses.
3. Residents were made to dig for their own building and plastering sand without being paid.

4. Some houses were building close to each other in a bid to avoid building one of the houses either in the street or in the ditch.
5. There is no easy access between the road and the houses as it appears that these houses were build in a flood zone area.
6. Some of the houses have no ablution systems at all while others have ablution systems, which spill water into the house when toilets are flushed.
7. Some houses have roof leakages, which is caused by poor workmanship.
8. Some of the houses are not properly plastered between the wall and window frames.
9. Water pipes have been eroded and damaged by raining water. Residents complain about lack of water.

## **FINDINGS**

Taking into account the report submitted by Councillor Masenamela and the observations of the Task Team the following findings are made:

The developers engaged in RDP housing in these areas are: -

- \* Kojonko Developers
- \* Build and Paint Developers
- \* Phamusa Developers
- \* Raiters Developers
- \* Piet Masedi

The Project Managers involved in these projects are one Nkwena now attached to Polokwane Municipality and another lady whose names are unknown to us for now.

1. It appears that there were payments made to developers for houses which were either not build at all or were build but not complete or were complete but with poor quality.
2. There are people who have registered for the allocation of these houses but to date has not been awarded houses.
3. There are hazardous conditions in the areas where some houses are build, which must be attended to urgently. These hazards are, for example, ditches, which flood with water on rainy days, dumps of disposed medicine and hospital equipments, etc.
4. There is an urgent need to repair water supply pipes to provide residents with fresh water.

## RECOMMENDATIONS

1. The Head of the Department must obtain and submit the original master plan of the township from the technical division in the Department to enable the Task Team to probe the establishment process of this township.
2. The Head of the Department should submit a clear audit and verification of the beneficiary list and the people now allocated the RDP houses.
3. The Head of the Department should submit a list of reports from each developer on the houses allocated, houses build, houses outstanding and claims submitted by the developers and payments of same if any.
4. The Head of the Department should submit all the names of the Project Managers who were in charge of all the projects in the areas and the reports they submitted for each house.
5. The Head of the Department should submit a Project Manager to do an inspection with a few members of the Task Team and a project manager from the Municipality and compile a technical report on the quality of the houses in all the areas.
6. All these projects have to be submitted for forensic audit.

The findings and recommendations referred to above were made in the second interim report and they still stand.

The Head of Department was raised for comment and input and he responded as follows:

In regard to the list of developers of developers which were identified by the Task Team as participants in the construction of houses the Head of Department responded as follows:

*“The report reflects (5) Developers who are known to the department are Khojongo Developers, Build and Paint as well as Barmose. These three are appointed and involved in Rural Housing Program. The current Rural Housing Program process does not require the “Township Establishment. The departmental approach is that in rural areas, the houses are build where people are residing, as long the areas are suitable for human settlements.*

*There are two Developers who are not known appointed by the Department, Raiters Developers and Piet Masedi.”*

In regard to Recommendations 1, 2, 3, 5 and 7 the response was that the report is still being finalized. This report should be submitted to the MEC and be handled in terms of guidelines made in the report in as far as certain issues may have same similarities.

In regards to Recommendation 4 the Head of Department responded as follows:

*“Name of all Project Managers involved in the projects and reports they submitted*

- Stanley Nxumalo
- Kwena Mohololo (With National Housing Building Registration Council NHBRC now)
- Shadrack Maukhabuki
- Robert Ratshitanga
- Douglas Tsebe
- Netshidaulu (With Polokwane Municipality now”

## **FINDINGS**

New findings were made except to mention that new documents submitted by Head of Department will be submitted to forensic auditors.

## **RECOMMENDATIONS**

1. The report made by Councillor Masenamela and the allegations made therein should be submitted to forensic auditors for further probing.
2. In regard to recommendations 6 the Head of Department has submitted copies of contracts between Khojongo Developers, Build and Paint Developers and Barmose Developers.

These contracts should be submitted to forensic auditors as well.

## **8. NATIONAL HOME BUILDERS REGISTRATION COUNCIL (NHBRC)**

The NHBRC responded in terms of a letter dated 14 January 2005, which reads follows:

*“We have so far established that the homebuilders provided on the list are not registered with the NHBRC, unless their trading names differs from list provided to us by your good self.*

*With regard to our role, we advice that we only received a mandate from national government for low cost housing in 2002, but to date not received any enrolments in the Limpopo Province and as a result we are unable to play significant role unless and until we receive a mandate from the Provincial office in terms of section 3 (j) with section 5 (4)*

*We recommended or advice the Department or advice the Department to utilise registered homebuilders according to section 10 which indicates ‘no person shall carry on the business of homebuilder or receive any*

*consideration in terms of any agreement with a housing consumer in terms of construction of a home. UNLESS that person is a registered homebuilder...”*

The NHBRC is prepared to make available a list of registered homebuilders at a cost of R228.00

## **FINDINGS**

1. The Department has not registered with the NHBRC.
2. The omission is one of the major causes of appointing developers who are not accredited to engage in the industry of building RDP houses and who therefore would not complete their projects or who build sub-standard houses to the prejudice of government and the beneficiaries.
3. This omission amounts to a serious administrative irregularity, which may be dealt with in terms of the Public Service Act and Regulations and the Public Finance Management Act.

## **RECOMMENDATIONS**

1. The Department comply with the requirements of NHBRC and the relevant legislation.
2. The failure to register with NHBRC is a serious administrative irregularity, which should be dealt with in terms of internal disciplinary measures prescribed by the Public Service Act and Regulations.
3. The financial implications, which may flow out of this serious administrative irregularity, may be dealt with in terms of the Public Finance Management Act.

## **9. THE MUNICIPALITIES RESPONDED AS FOLLOWS:**

### **9.1. POLOKWANE MUNICIPALITY**

The Municipality Manager of the Polokwane Municipality responded in terms of a letter dated 18 January 2005.

The letter indicates that the Task Team does not clearly indicate the problems encountered during the housing process. That would have enabled them to respond to direct questions and be in a better position to clearly indicate what transpired in respect of matters raised by the Task Team.

This letter further deals with the following aspects

1. The process embarked on in identifying the housing need
2. The process embarked on in identifying the beneficiaries' list.

3. The role of the municipality in managing and supervising the developers allocated to build houses. It details discussions on issues such as the role of monitoring quality of houses (Maja, Chuene and Molepo projects are cited as examples) contracting developers, use and payment of local labourers.

The Municipality contends that their role in managing the People Housing Process (PHP) is quality control, appointment of developers and purchase of building material whereas in a Project Link Development their role is to monitor the quality of houses in terms of the building regulations.

## **FINDINGS**

1. This Municipality seems to be concerned about a clear definition of roles between the Department and Municipalities.
2. The Municipality has put in place some system of dealing with the identification of the housing need and the compilation of the beneficiary list.
3. The municipality has raised red flags in respect of non-compliance with the building regulations in certain areas and apparently the Department failed to respond. This is a serious administrative irregularity on the side of the Department and the affected officials.

## **RECOMMENDATIONS**

1. Further interaction between the Municipality and the Department must be improved (specially on the side of the Department) so that the processes established by the Municipality can be adopted to remedy the problems encountered in housing. This may set a trend to improve and develop strategies in housing projects between the Department and other Municipalities.
2. Failure on the part of the Department to respond to red flags raised by the Municipality in respect of non-compliance with building regulations in certain areas put the blame on the doorstep of the Department and the officials in charge of the housing projects.
3. The failure to respond to the red flags referred to above amounts to a serious administrative irregularity, which may be referred to internal enquiry processes in terms of the Public Service Act and Regulations.
4. The financial implications, which may flow out of these serious administrative irregularity, may be dealt with in terms of the Public Finance Management Act.
5. There should be a well-drafted agreement between the Department and the municipalities, which defines their respective roles.

6. Contract used by other Provinces such as Gauteng should be compared for this purpose with the assistance of the State Law Advisers in the Premier's Office and State Attorney to come up with a comprehensive service level agreement that will serve this purpose.

## **9.2. BA-PHALABORWA MUNICIPALITY**

The Director in Corporate Services from Ba-Phalaborwa Municipality responded in terms of a letter dated 12 January 2005.

The letter comments on the following aspects

1. Identification of housing need.
2. Compilation of beneficiary list.
3. The role of the Municipality in managing and supervising the developers.

The Municipality suggest that during the appointment of developers the role of Municipalities should be clearly spelt out in the contract to avoid conflicting roles.

### **FINDINGS**

1. The Municipality wants to have a clear definition of roles between the Department and Municipalities
2. The Municipality has put in place some elementary systems of dealing with the identification of the housing need and the compilation of the beneficiary lists

### **RECOMMENDATIONS**

1. There must be further interaction between the Department and the Municipality
2. There should be a well-drafted agreement between the Department and the municipalities, which defines their respective roles. Contract used by other Provinces such as Gauteng should be compared for (this purpose) with the assistance of the State Law Advisers in the Premier's Office and State Attorney.

## **9.3. BLOUBERG MUNICIPALITY**

This municipality responded in terms of a letter dated 13 January 2004 (which was supposed to be 2005) and indicated the following.

- They identify the housing need by referring to their indigent list.

- The people who were employed by the Department of housing were used to complete the beneficiary list.
- They have just started with their monthly meetings with developers and the Department of housing to create a healthy working relationship.
- They do site visits to check quality, but they admit that there was no co-ordination between themselves and the Department hence they could not monitor quality.
- Subcontractors were appointed by developers
- Labourers were used and paid by developers

They have attached correspondence, which was referred to the Department in respect of uncompleted houses, quality of houses and non-payment of labourers

A letter dated 14 October 2004 directed to the MEC by the Mayor, Dr Kubyana indicates the following concerns about developers:

#### 1. Youth Developers

Youth Developers was awarded a contract to develop rural houses to a total number of 300 units in the financial year 2003-2004. To date the project is not yet complete. The table below contains problems on this cluster project.

VILLAGE	NUMBER OF UNITS BUILD	PROBLEMS
Buffelshoek		Project not complete
Miltonduff	25	Workers not paid
Broadhill	30	Workers not paid
Bognafarm	40	
Inveraan	39	One houses is poor quality
Dantzig	10	Ten slabs completed and no houses
Bull-bull	9	One house is of poor quality
Lepzig	15	15 houses are left uncompleted

The Mayor attempted to speak to the M.D. of youth Developers telephonically and his response was extremely arrogant. Kgoshi Mmaleboho also attempted to speak to the same developer and he was also meted with an arrogant response.

The Municipality does not have a measure or means to bring the developer back on site to rectify and complete the unfinished work. They were requesting the MEC to intervene.

## **2. Bomba Africa Developers**

The Mayor wrote a letter to the MEC about Bomba Africa Developers who have failed to commence with their housing project as tabulated below:

VILLAGE	NUMBER OF HOUSES
My Darling	50
Bergendaal	30
Builtfontein	30
DE-Vrede	90

The mayor is requesting the MEC to intervene.

## **3. Attap Developers**

The Mayor wrote a letter to the MEC about Attap who have failed to commence with their housing project as tabulated below:

VILLAGE	NUMBER OF HOUSES
Avon Innes	50
Edwinsdale	25
Glenferness	25
The Granch	20
Witten	30
Puraspan	30
Dilining	19
Marobjane	1

The Mayor is requesting the MEC to intervene.

## **4. New Venture Developers**

The Mayor wrote a letter to the MEC about New Venture Developers who have failed to commence with their housing project as tabulated below

VILLAGE	NUMBER OF HOUSES
Arrie	15
Longdon	30
Simpson	20
Sias	15
Taaibosch	120

A further copy of a letter, undated, which was attached by the Municipality in this response and directed to the MEC, is the letter which reached the Task Team and was referred to in this report about the non-performance by Matuku Developers above.

It is imperative, at this stage, to quote some details of this letter to conceptualise the response from the Municipality:

## **POOR QUALITY OF RURAL HOUSES**

*“Developers within our municipality have a clear understanding of the fact that they report they are being managed directly by the Department of Housing, that being the Scenario, we find our hands tied. The ideal situation should be that our Technical Department should manage quality on housing delivery by means of approving payment certificates. To avoid payment of incomplete job, Technical Department. If this is not the case, then we shouldn’t be having so much of extreme poor quality on some houses. The following are affected villages:*

Name of village	Problems
Pax	Poor quality
Bogreg	Poor quality
Makgari	Poor quality
Simpson	Project not started yet
Arie	Project has not started since 2001
Broadhill	Poor quality
Bognafam	Unpaid workers
Mmeren	Unpaid workers
Thalane	Poor quality + unpaid workers
Mafateng	Poor quality + unpaid workers
Ngwanallela	Poor quality
Mosehleng	Poor quality
Bayswater	Poor quality
Kiping	Incomplete houses

*As shown on the abovementioned table Quality is not the only problem, we are also experiencing exploitation of our people by some of this developers.*

*We believe housing should regulate the function of Quality control to capable Technical Department whereby payment certificate shall also have to be approved by our manager Technical Services who shall enforce a smooth running of all housing projects.....”*

The Municipality contends that, in order to deal with the challenges that are facing the housing issues they recommend in their letter the following:

- Local Municipality approves payment certificates before they are send to the Department of housing for approval.

- The PSC (Project Steering Committees) be established before the project can start.
- Regular site (technical) meetings be held every month.
- Contract document signed between the Department and developers be forwarded to local Municipalities after approval for monitoring purposes.

## **FINDINGS**

1. The Municipality wants to have a clear definition of roles between the Department and Municipalities
2. The Municipality has put in place some elementary systems of dealing with the identification of the housing need and the compilation of the beneficiary lists.
3. The Municipality is making certain elementary recommendations, which should be taken into account by the Department it, implement some restructuring.
4. The above-mentioned letters dated 14 October 2004 were directed by the Mayor to the MEC after the MEC had appointed this Task Team. It is interesting to note that they did not reach the Task Team through the Department but only under cover of a response from the Municipality. They were probably not referred to the MEC as well. The Task Team has reasonable grounds to suspect that these letters were held back from, at least the MEC and the Task Team.

## **RECOMMENDATIONS**

1. There must be further interaction between the Department and the Municipality.
2. There should be a well-drafted agreement between the Department and the municipalities, which defines their respective roles. Contract used by other Provinces such as Gauteng should be compared for this purpose with the assistance of the State Law Advisers in the Premier's Office and State Attorney.
3. The recommendation made by the Municipality should be taken into account during the restructuring of systems in the Department
4. The MEC is advised to seek for an explanation from the rest of the Municipalities the Task Team directed correspondence to. They did not respond. They are the following:
  1. Greater Musina

2. Greater Tubatse
3. Greater Letaba
5. The other Municipalities who were not visited by the Task Team due to time constraints should be contacted by the Department on the directive of the MEC, if she so directs, to give them an opportunity to place their grievances on record so that a solution which is sought to be provided should cover the entire province. This process can be assigned or be included in the restructuring process which the MEC might embark on after this report.

## **10. THE SUPPLIERS RESPONDED AS FOLLOWS:**

### **10.1. K.O. HARDWARE T/A E.H. HASSIM**

A letter from the above mentioned supplier dated 11 January 2004 read as follows:

*"I am responding to your letter dated 10 January 2005. Please note the following:*

- 1. We have supplied all the material for Blouberg Municipality- Youth Enterprises.*
- 2. Some material on Ba-Phalaborwa- Atap and Blouberg- Matuku Developers as per orders that were submitted to us.*

*Further, if there is any other information e.g. copies of invoices etc. That you require, please contact my office."*

### **10.2. BARGAIN HOUSE**

*" We are receipt of your letter dated 10/01/05.*

*We regret to read in your letter that there might be acts of corruption and misadministration that exists in the supply of material.*

*We, however, place on record that not one of the companies mentioned in your correspondence is a client of ours*

*You are welcome to examine our debtor's list, which we are more than willing to avail to yourself."*

### **10.3. BUILDERS MARKET**

*"We are in receipt of your letter regarding the above matter, dated 10 January 2005 and respond as follows:*

- (a) *Kindly furnish us with more details with reference to dates of material supplier, account numbers, contact persons and letters of appointment of listed developers in order to assist us in tracing the alleged business transactions from our records.*
- (b) *It is important to indicate which entity was favoured by payment of such accounts.*

*As discussed telephonically, a copy of your letter will be forwarded to our head office who is in Woodmead who is in a better position to commit on any housing transactions, which transpired prior to 2000”.*

## **FINDINGS**

The responses are not conclusive and they still need to be verified

## **RECOMMENDATIONS**

1. The response from the suppliers should be submitted to the forensic audit process because they may form part of the chain of evidence to prove or disprove whether developers used quality or sub-standard material in the building of RDP houses.
2. K.O. Hardware t/a E.H.Hassim mentions areas and developers they concluded business with but do not mention one developer called Nhlaps CivilS with whom they seem to be having a dispute with a contract they have signed. A copy of what purports to be an agreement between the parties is part of the documents submitted to the Task Team and it is recommended that this matter be probed further. It may set a trend to resolve some of the bottlenecks in this industry, which make it difficult for the BEE developers to survive in business.
3. The Head of Department should provide a data of all suppliers who supplied material to the developers; Municipalities and the Department in different projects in the Province and this information should be made available for forensic auditing.

## **11. THE DEVELOPERS RESPONDED AS FOLLOWS:**

### **11.1. KHOJONGO INVESTMENTS CC**

This developer made a detailed submission, which is filed of record with the Task Team.

## **FINDINGS**

1. It would appear that this developer was not credit worthy before the allocation of the first projects on housing
2. It is still a moot point to determine whether this developer would have obtained an accreditation by the NHRBC to engage in this business if the NHRBC was involved by the Department to accredit developers.
3. It is a further moot point whether the process of providing RDP projects to BEE developers is not frustrated by its own policies and framework if the Department allocate projects to developers such as Khojongo Investments CC or if the Department would refuse to empower BEE developers because they cannot be accredited to engage in such projects
4. It would appear that financial institutions and big business do not play a constructive role in the process of empowerment and in particular in the industry of RDP projects.
5. The Task Team found out that the National Housing Code makes provision for the establishment of the National Urban Reconstruction and Housing Agency (Nurcha), which was established in 1995. It was as a Presidential project under the RDP to address the housing backlog and inequities of the past.  
Nurcha operates as a non-profit Section 21 Company to facilitate low cost focus on the needs of families earning up to R1500 per month. Nurcha is funded by a range of donors including the South African Government.  
It offers two types of programmes viz the Guarantee Programme and the Joint Venture Development Fund.

#### **GURRANTEE PROGRAMME:**

Nurcha's Guarantee Programme comprises two components:

- Facilitating Bridging Finance: Nurcha offers guarantee to encourage financial institutions to make bridging finance loans to developers and contractors. Established large developers and emerging small contractors are provided for in terms of this programme. Nurcha provides additional assistance to emerging contractors with assistance in cash flow planning and management.
- Facilitating End-User Finance: Nurcha's objective is to find ways to release credit for housing to people who do not meet the criteria of existing lending institutions. To end this, Nurcha has three areas of focus namely savings linked credit schemes,

housing institutions developed to accommodate both rental and instalment sale schemes and guarantees for establishment banks and non bank lenders.

Joint Ventures Development Fund: This fund was originally established by government and placed within the NHFC. In April 1998 the NHFC signed an agreement with Nurcha who now manages the fund on the NHFC's behalf. The fund comprises of R100 million. Its purpose is to invest equity into joint ventures with private sector developers and contractors to encourage and facilitate the development of housing in the R20 000 to R60 000 range.

The National Housing Code also refer to the Social Housing Foundation (SHF) which was established by the National Housing Finance Corporation (NHFC) in November 1997 as a Section 21 Company to promote support and assist in the development of social housing in South Africa.

The SHF provides training, advice, and technical support to established and emerging social housing institutions, advises on policy and raises funds for social housing developments. It works closely with the Housing Institutions Development Fund (HIDF) of the NHFC

## **FINDINGS**

There are other views, which contend that these institutions are not helpful because they work through agents who then benefit more than the intended developers or other institutions in social housing development. The Task Team did not have time to investigate this matter further but the Department could pursue it in its restructuring process.

## **RECOMMENDATIONS**

1. There should be a serious investigation made to establish whether or not the current policies and framework of government pertaining to the industry of housing rhymes with policies of Black Economic Empowerment as envisaged by government.
2. Institutional arrangements now in place such as the National Housing Code, NHBRC, the role of financial institutions and parastatals such as LIMDEV, IDC and those referred to in the National Housing Code above, should be scrutinized carefully to establish whether they need to be re-aligned to rhyme with the policy of government in the industry of housing.
3. The provisions of the Consumer Affairs (Harmful Business Practices) Act 8 of 1996 should be invoked in case some of the role players' conduct contravenes the provisions of this legislation. Such cases should be reported to the Consumer Protector in the Department of Trade Industry and Tourism.

4. The Consumer Court is now in place in the Province and all conduct which seem to harm or prejudice consumers should be referred to this institution through the Consumer Protector.

## **12. KMPG INVESTIGATIONS**

There are investigations conducted by KPMG on the instructions from the National Department of Housing.

The Task Team duly represented by the Chairperson had discussions with KPMG and it was agreed that each institution had to proceed with their own assignments and report to their respective principals

The Task Team cannot and does not intend to make any findings and recommendations on this matter.

## **13. INPUTS FROM THE DEPARTMENT**

The Chairperson of the Task Team had discussions with the Head of Department concerning the preliminary findings made in the Second Interim Report.

The Head of Department made the following observations:

1. The legislative framework and the policy of government made it difficult to implement construction and delivery of houses in that:

- \* there was urban bias encouraged by processes, which made it difficult to establish townships or build houses in rural areas.

- \* there is a process of engaging town planners and surveyor general to conclude certain formal requirements such as designing a township, approve plans for land use, register township, transfer sites to beneficiaries etc. This process is complicated and it gave developers problems to comply with.

The abovementioned process had to be conducted by the developer who, on average, spends two years to complete.

2. There was a further complication in rural projects because traditional leaders would resist such developments in fear that government is alienating them from their land. It was, therefore, difficult to obtain tribal resolutions giving consent to such developments and this hampered proper transfer of property for development and later to beneficiaries.

There were conveyances appointed by the Department to facilitate the transfer of stands to beneficiaries but they were also hamstrung by these

complications and hence there are beneficiaries who, to date, have no title deeds to their property.

3. The rural communities have attachment and sentiments to their rural setting and caused people not occupy houses build in areas such as Mhinga Village, Ga-Mothapo, Jane Furse etc.

The non-occupation of houses then complicated the authenticity of the beneficiary lists, (which were compiled initially by the developers) because strange people started occupying the houses, which were standing empty for a long time.

4. The big companies in the housing construction industry made an undertaking to participate in the process of building RDP houses. They reneged from such commitment because the business has a low profit margin. This left the Department with BEE developers who had problems of capacity, expertise and financial backup
5. The role of the NHBRC is acknowledged by the Head of Department. The Head of Department remarked that the warranty undertaken by NHBRC started in the year 2000 whereas there were projects, which started before 2000.

The Department requires all developers to submit a tax clearance certificate for VAT and to register with the NHBRC. These requirements are stipulated by the Department on registration of a developer.

However, the NHBRC has a limited role in the following respects

- their warranty to protect house owners started in the year 2000 whereas there are housing projects, which were, build in 1999 e.g. Mothapo area.
- the Peoples Housing Process (PHP) is not enlisted for approval by the NHBRC.
- the registration required by the NHBRC is meant for a developer who conducts a registered business such as a company or a Close Corporation and thereby neglects an ordinary man in the street who is a contractor for building houses.

- The warranty provided by NHBRC covers a period of up to twelve (12) months on defects, which the Department considers to be a limitation.
6. The Head of Department indicated that the Housing Code is rigid in terms of other processes. It provides, inter alia, that no top structure of a house should be build and paid for before a tribal resolution on land transfer is obtained. This has lead to complications such as:
    - Developers (e.g. Tebcon and Tirashitabona) who used their funds to build houses could not be paid to date.
    - A developer in Malaeneng, Mapareng and Leboeng could not built top structures and resorted to building toilets while awaiting the tribal resolution. The contract between the Department and the developer had to be terminated because the waiting period caused the building material to escalate above the subsidy allocated initially.

The issue of compiling beneficiary lists was removed from developers and given to municipalities.

Municipalities have experienced their own problems through some of their councillors who are not fair to the system. For example in Makhado a beneficiary list was compiled and it transpired that 80 sites were needed for RDP houses. The Ward Councillors added 2 sites on the list and houses have now been built up to wall plate level.
  7. The Department has realised that it does not have enough personnel capacity (like Gauteng) to drive the housing division. There is an intention to embark on a restructuring process to close this gap.
  8. The contract used by the Department to engage the developers do not have enough details required by a properly drawn service level agreement.
  9. The project managers need more training and skill to service the entire province and they need to be biefed up with more staff either from the Department or from the Municipalities.
  10. The Department acknowledges the findings and recommendations of the Task Team

The Department has put in place certain remedial strategies:-

- since the year 200 no allocation of new projects was made so that the current bag log must be dealt with.

- The Department together with the Department of Public Works has embarked on a project called Sakhasonke to train people in housing construction skills
- The Department has engaged Cuban Engineers to assist the Municipalities in skills development.
- The CSIR is engaged to develop a Management Programme for Project Managers
- The intention is to register Project Managers with the Association of Project Managers so that they must be bound by the ethics and code of conduct of the organisation, which will be a deterrent factor.
- The numbers of Project Managers employed by the Department have to be increased so that a Project Manager should be attached to each project.
- The Head of Department intends to embark on a restructuring programme of the whole Department.
- The Department wants to engage students from technical institutions to build a source from which skill in this industry could be harnessed
- The intention is to contact SETA to find leadership programmes envisage herein
- The accreditation of Municipalities will be embark on. The Department has targeted the first 5 municipalities
- The Department wants to embark on a consumer education programme to educate beneficiaries and bring them on board and sensitise them to appreciate the costs involved in building an RDP house instil the sense of ownership and encourage them to monitor the quality of building the construction phase.

The head of Department is ware of other investigations such as the Gobodo Report and investigations conducted by KPMG.

## **CONCLUSION**

It is clear from the findings and recommendations that there were some gross irregularities that took place in the administration of the Department.

The said irregularities can be ascribed to inter alia a lack of proper administration systems, lack of proper vision and executive leadership, lack of capacity and skill, lack of proper co-ordination strategy on how to deal with the Municipalities. There are cliques and divisions in the personnel which destroys

the spirit of teamwork and concerted loyalty in the execution of functions of the Department.

Some of the Mayors, Municipal Mangers and Councillors seem to be on a frolic???? Of their own in the Municipalities. They have not woken up to realize their Constitutional responsibilities in the third tier of government.

There appears to be rampant malpractices caused by a desire of self-enrichment through the system of government both in the Department and at Municipalities. This attitude is in a surrogate relationship with some of the private sector individuals and entities that work hand in hand with the two tiers of government to perpetuate such malpractices.

There is an urgent need to engage in a programme of restructuring the Department and align such restructuring to bring in line proper governance in the Department and the Municipalities.

### **ACKNOWLEDGEMENT**

The Task Team acknowledged the honour and privilege of being entrusted by the MEC with the responsibility of dealing with issues mentioned in these terms of reference. It has been a privilege to work under the guidance and support of both MEC MACHUENE ROSINA SEMENYA AND MEC MAITE NKOANA-MASHABANE.

The members of the TASK team, Mr. N.M. Mamabolo who did secretarial work, members of staff in the office of the MEC and secretary to the Chairperson are also acknowledged for the hard work they have put into this assignment.

DATED AT POLOKWANE on this 17<sup>th</sup> day of March 2005.

1. MR L.M. MAHLANGU \_\_\_\_\_  
(Chairperson)
2. MR N.M. MAMABOLO \_\_\_\_\_  
(General Secretary)

