

AGENDA

Extra- Ordinary Council Meeting

on

THURSDAY





10 OCTOBER 2013

at

19:00



MUNICIPALITY OF SWAKOPMUND

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Ref No A 2/3/5

Enquiries: A Gebhardt

03 October 2013

The Mayor and Councillors
Municipality
SWAKOPMUND

Dear Sir / Madam

NOTICE: EXTRA- ORDINARY COUNCIL MEETING

Notice is hereby given of an **ORDINARY COUNCIL MEETING** to be held in the Council Chambers, Municipal Office Building, Swakopmund on:

THURSDAY, 10 OCTOBER 2013 at 19:00,

**E U W Demasius
CHIEF EXECUTIVE OFFICER**

AG/-

INDEX

1. **OPENING**

2. **APPLICATIONS FOR LEAVE OF ABSENCE AND DECLARATION OF INTEREST**

2.1 Application for leave of absence.

2.2 Declaration of interest.

3. **CONFIRMATION OF MINUTES**

(E/C/M 2013/10/10 - A 2/3/5)

None.

4. **INTERVIEWS WITH DEPUTATIONS OR PERSONS SUMMONED OR REQUESTED TO ATTEND THE MEETING**

None.

5. **OFFICIAL ANNOUNCEMENTS, STATEMENTS AND COMMUNICATIONS**

5.1 Announcements by the Mayor and Chairperson of Council.

6. **PETITIONS**

None.

7. **MOTIONS OF MEMBERS**

None.

8. **ANSWERS TO QUESTIONS OF MEMBERS OF WHICH NOTICE WAS GIVEN**

None.

9. **FEEDBACK REPORT ON THE EXECUTION OF RESOLUTIONS
TAKEN BY COUNCIL IN OCTOBER 2013**

None.

10. **REPORT TO COUNCIL ON RESOLUTIONS TAKEN BY
MANAGEMENT COMMITTEE DURING OCTOBER 2013**

None.

11. **RECOMMENDATIONS OF THE MANAGEMENT COMMITTEE
MEETING HELD IN OCTOBER 2013**

11.1 **A SPECIAL ORDINARY MANAGEMENT COMMITTEE MEETING
HELD ON 10 OCTOBER 2013**

ITEM NO	SUBJECT	REF NO	PAGE
11.1.1	Feedback: Cancellation Of The Transaction For The Sale Of Erf 4326 (A Portion Of Erf 63, Mondesa), Mondesa: Messrs Mondesa Property Investment CC	M 4326	1

11. **RECOMMENDATIONS BY THE MANAGEMENT COMMITTEE**
- 11.1 **SPECIAL MANAGEMENT COMMITTEE MEETINGS HELD ON 10 OCTOBER 2013**
- 11.1.1 **FEEDBACK: CANCELLATION OF THE TRANSACTION FOR THE SALE OF ERF 4326 (A PORTION OF ERF 63, MONDESA), MONDESA: MESSRS MONDESA PROPERTY INVESTMENT CC**
(E/C/M 2013/10/10 - M 4326)
- Special Management Committee Meeting of 10 October 2013, Addendum 5.1 page 01 refers.**
-

A. The following item was submitted to the Management Committee for consideration:

The Management Committee on **12 September 2013** under item 7.13 resolved as follows:

- (a) *That this item be referred back.*
- (b) *That the matter be referred to Messrs Lorentz Angula Inc. to obtain an opinion from an advocate on:*
 - (i) *Whether the agreement between Council and Messrs Mondesa Property Investment CC is valid or enforceable and;*
 - (ii) *Whether either Council or Messrs Mondesa Property Investment CC can rely on the terms and conditions of the said agreement;*
 - (iii) *If the agreement is no longer valid, whether it can be revived and under what circumstances;*
 - (iv) *What the effect was of the payment received from Messrs Malherbe and Partners on behalf of Messrs Mondesa Property Investment CC and the subsequent correspondence;*
 - (v) *The correctness of the 2 (two) legal opinions provided to Council.*
- (c) *That copies of the proof of payment of the transfer fees to Messrs Kinghorn Associates and the emails to them be submitted to Management Committee.*
- (d) *That the amount of N\$1 172 125. 77 paid by Messrs Malherbe and Partners on behalf of Messrs Mondesa Property Investment CC not be refunded yet.*

The Management Committee on **16 May 2013**, under Item 7.23 resolved as follows:

During the discussion of this item Councillor J Kambueshe declared his interest in the matter and recused himself from the discussion. Messrs Mondesa Property Investment CC gave a presentation to the Management Committee during the meeting. It was:-

RESOLVED:

- (a) *That the interest declared by Councillor J Kambueshe and the fact that he left the chambers during the discussion be noted.*
- (b) *That the presentation given by Mr J Kambueshe of Messrs Mondesa Property Investment CC to Management Committee during the meeting be noted.*
- (c) *That the presentation by Mr J Kambueshe of Messrs Mondesa Property Investment CC be discussed at a Special Management Committee meeting to be arranged for 24 May 2013 at 08H00.*
- (d) *That Messrs Kinghorn be requested to attend the meeting and brief Council on the presentation given by Mr J Kambueshe.*

The verbatim minutes of Mr J Kambueshe of Messrs Mondesa Property Investment CC were provided to Messrs Kinghorn Associates in order to prepare for the Special Management Committee Meeting scheduled for Monday, **27 May 2013** at 18:00; in order to respond to the statements made by Mr J Kambueshe and further advice Council.

Attached for ease of reference is a copy of the verbatim minutes marked **Annexure "A"**.

The following is a history of the transaction for the sale of Erf 4326, Mondesa between Council and Mondesa Property Investment CC / Councillor Juuso Kambueshe:

	Date:	Description of events:
1	30/06/2006	Letter from Messrs D.F. Malherbe on behalf of their client, Mr Kambueshe, requesting Council to buy a part of Erf 63, Mondesa.
2	18/05/2006	<p>It was recommended to the Management Committee:</p> <ul style="list-style-type: none"> (a) That Council alienates a portion of Erf 63 Mondesa, 17452.74 sqm in extent to Mr Juuso Kambueshe by means of private transaction for the development of a Shopping centre. (b) That the price of this erf be determined by calculating the average value of the two closest of three sworn valuers based on a "General Business" zoning. (c) That all costs related to this transaction, including statutory costs, be for the account of the applicant. (d) That any upgrading of additional services required for the development be for the account of the applicant. (e) That sufficient parking for the public, as well as sufficient delivery and off-loading facilities be provided on the premises. <p>The Management Committee resolved:</p> <ul style="list-style-type: none"> (a) That the price of the erf be determined by calculating the average value of the two closest of three sworn valuers based on a "business zoning". (b) That the matter be resubmitted to the Management Committee after the valuations have been obtained and that Mr Kambueshe be informed that Council is awaiting the valuations before a decision is made.
3	01/06/2006	Letter from the General Manager: Corporate Services & Human Resources To Messrs DF Malherbe & Partners informing them of the Management Committee resolution.
4	02/06/2006	Fax sent to several valuers to determine the market valuation of Erf 63, Mondesa considering the future "Business" zoning.
5	18/07/2006	<p>It was recommended to the Management Committee:</p> <ul style="list-style-type: none"> (a) That Council approves the selling price and alienation of a portion of Erf 63, Mondesa, 17 452.74m² in extent to Mr Juuso Kambueshe by means of private transaction for the development of a shopping centre at a purchase price of N\$1 302 672.50 (17 452.74m² x N\$74.64), plus 15% VAT in the amount of N\$195 400.87. (b) That all costs related to this transaction, including statutory costs, be for the account of the applicant. (c) That any upgrading or additional services required for the development be for the account of the applicant. (d) That sufficient parking for the public, sufficient delivery, off-loading facilities and adequate access to the aforementioned, be provided on the premises.

		<p>(e) That the appropriate rezoning be made and that no betterment fee be applicable, as the erf price was determined at a market related price based on a business zoning.</p> <p>(f) That no building plans be approved by the building control section unless proof can be supplied that the necessary statutory requirements have been complied with.</p> <p>(g) That the transaction be subject to Council's standard conditions as contained in the Property Policy, i.e:</p> <p>(i) Building operations</p> <ul style="list-style-type: none"> Statutory disciplines (alienation & subdivisions) must be completed within 12 months from date of sale External and internal services must be completed within 24 months from date of sale The whole development project must be completed within 48 months from date of sale and if no development is made in terms of the conditions of the contract, the property shall revert to Council without any compensation to the purchaser <p>(ii) Submit written proof from a financial institution that an account exists specifically to finance this project</p> <p>(iii) An applicant has to pay a non-refundable deposit of 10% of the purchase price of the erf to Council immediately upon request, and before any statutory actions are started with.</p> <p>(iv) Submit total layout plans, indicating the infrastructure, details of the project as well as the service demand for the intended project.</p> <p>(v) Minimum building value: At least 4 x municipal valuation or the average value of the main buildings in the immediate surrounding area.</p> <p>(vi) Building period: Building operations to start within 24 months of date of sale or from availability of municipal services, whichever takes place later in point of time.</p> <p>The Management Committee resolved:</p> <p>(a) That Mr Juuso Kambueshe be informed of Council's offer (in terms of the current policy) for the selling and alienation of a portion of Erf 63, Mondesa, 17 452.74m² in extent for the development of a shopping centre at a purchase price of N\$1 302 672.50 (17 452.74m² x N\$74.64), plus 15% VAT in the amount of N\$195 400.87.</p> <p>(b) That Mr Juuso Kambueshe also be informed that Council is prepared to consider counter offers in respect of the purchase price from him.</p>
6	26/7/2006	Letter from the General Manager: Corporate Services & Human Resources to Messr DF Malherbe & Partners informing them of the Management Committee resolution.
7	04/08/2006	Letter from Messrs DF Malherbe & Partners to the Chief Executive Officer asking Council to reconsider the purchase price to that of N\$ 5.00 per m ² .
8	17/08/2006	<p>It was recommended to and by the Management Committee:</p> <p>(a) That the counter offer from Messrs Malherbe & Partner on behalf of his client Mr Juuso Kambueshe, for a selling price of N\$5,00/m² not be considered,</p> <p>(b) That Mr J Kambueshe be informed of Council's final offer for the alienation of a portion of Erf 63 Mondesa, 17 452,74m² in extent for the development of a shopping centre at a purchase price of N\$48, 05m² x 17 452,74m² = N\$838 604.15 + 15% VAT N\$125 790,62 for the total amount of N\$964 394,77.</p>

		<p>(c) That Council reserves the right of first refusal to obtain the immovable property for a period of 5 years on the same terms as being offered to Mr Kambueshe, which right shall have to be exercised within a period of 60 days from the date of the offer coming to Council's knowledge. This condition must be endorsed against the title deed of this portion of Erf 63 Mondesa.</p> <p><i>It was resolved by the Management Committee:</i></p> <p><i>That this item be addressed at the meeting of 22 August 2006 and that the establishment of a park on Erf 63, Mondesa also forms part of the discussions.</i></p>
9	22/08/2006	<p><i>It was recommended to the Special Management Committee:</i></p> <p>(a) That the counter offer from Messrs Malherbe & Partner on behalf of his client Mr Juuso Kambueshe, for a selling price of N\$5,00/m² not be considered,</p> <p>(b) That Mr J Kambueshe be informed of Council's final offer for the alienation of a portion of Erf 63 Mondesa, 17 452,74m² in extend for the development of a shopping centre at a purchase price of N\$48,05m² x 17 452,74m² = N\$838 604.15 + 15% VAT N\$125 790,62 for the total amount of N\$964 394,77.</p> <p>(c) That Council reserves the right of first refusal to obtain the immovable property for a period of 5 years on the same terms as being offered to Mr Kambueshe, which right shall have to be exercised within a period of 60 days from the date of the offer coming to Council's knowledge. This condition must be endorsed against the title deed of this portion of Erf 63 Mondesa.</p> <p><i>At the Special Management Committee it was recommended:</i></p> <p>(a) That the counter offer from Messrs Malherbe & Partner on behalf of his client Mr Juuso Kambueshe, for a selling price of N\$5,00/m² not be considered,</p> <p>(b) That Mr J Kambueshe be informed of Council's final offer for the alienation of a portion of Erf 63 Mondesa, 17 452,74m² in extend for the development of a shopping centre at a purchase price of N\$48,05m² x 17 452,74m² = N\$838 604.15 + 15% VAT N\$125 790,62 for the total amount of N\$964 394,77.</p> <p>(c) That Council reserves the right of first refusal to obtain the immovable property for a period of 5 years on the same terms as being offered to Mr Kambueshe, which right shall have to be exercised within a period of 60 days from the date of the offer coming to Council's knowledge.</p> <p>(d) That the transaction be subject to all statutory processes being successfully concluded.</p> <p>(e) That all costs of the transaction be for the applicant's account.</p>
10	24/08/2006	<p><i>At the Council Meeting it was recommended and resolved:</i></p> <p>(a) That the counter offer from Messrs Malherbe & Partner on behalf of his client Mr Juuso Kambueshe, for a selling price of N\$5,00/m² not be considered.</p> <p>(b) That Mr J Kambueshe be informed of Council's final offer for the alienation of a portion of Erf 63 Mondesa, 17 452,74m² in extend for the development of a shopping centre at a purchase price of N\$48,05m² x 17 452,74m² = N\$838 604.15 + 15% VAT N\$125 790,62 for the total amount of N\$964 394,77.</p> <p>(c) That Council reserves the right of first refusal to obtain the immovable property for a period of 5 years on the same terms as being offered to Mr Kambueshe, which right shall have to be exercised within a period of 60 days from the date of the offer</p>

		<p>coming to Council's knowledge.</p> <p>(d) That the transaction be subject to all statutory processes being successfully concluded.</p> <p>(e) That all costs of the transactions be for the applicant's account.</p>
11	29/08/2006	Letter from the General Manager: Corporate Services to Mr Kambueshe informing him of the Council resolution and requesting payment of N\$ 750.00 for the placement of an advertisement in terms of Section 63 of the Local Authorities Act.
12	04/09/2006	E-mail from Mr Kambueshe to the Chief Executive Officer requesting Council to reconsider the offer to sell only a portion of Erf 63 as Mr Kambueshe wishes to buy the entire Erf 63. He also requested that Council reconsiders the purchase price set at N\$ 48.05/m ² and lower it to his offer of N\$ 5.00/m ² .
13	12/10/2006	<p>It was recommended to and resolved by the Management Committee:</p> <p>That Mr Kambueshe be informed that Council suffices by its resolution of 24 August 2006.</p>
14	24/10/2006	Letter from General Manager: Corporate Services & Human Resources asking Mr Kambueshe to confirm that he accepts Council's conditions of sale.
15	26/02/2007	Email from Mr Kambueshe to 'confirm my intentions of purchasing Erf 63, Mondesa.'
16	30/05/2007	Letter from Messrs DF Malherbe & Partners on behalf of Mr Kambueshe accepting the terms of sale and paying N\$ 1000.00 for the purposes of advertising the sale.
17	03/07/2007	Date for the lodging of objections for the said sale as advertised lapsed with no objections that were received.
18	24/08/2007	Letter to Messrs Kinghorn Associates instructing them to draft an agreement of sale for the purchase of a portion of Erf 63, Mondesa to Mr Kambueshe.
19	24/08/2007	Letter to Messrs DF Malherbe requesting them to proceed with the subdivision of Erf 63, Mondesa and undertaking to deal with the Closure of the Public Open Space (erf 63, Mondesa) whereafter the closure certificate would be forwarded required for the subdivision.
20	04/09/2007	Letter from Messrs DF Malherbe requesting the draft Deed of Sale as soon as possible.
21	20/09/2007	Letter to Messrs DF Malherbe that agreement will be supplied as soon as it had been received.
22	10/01/2008	Letter from General Manager: Corporate Services & Human Resources to Messrs DF Malherbe & Partners supplying the certificate of closure and requesting them to proceed with the subdivision.
23	22/08/2008	Letter from General Manager: Corporate Services & Human Resources to Mr Kambueshe accompanying the Deed of Sale and asking for the signing thereof.
24	07/10/2008	Letter from Messrs Winplan informing Council that the approval from the Townships Board for the subdivision had been obtained and copies of the certificates were supplied.
25	15/10/2008	Letter to Messrs Winplan requesting the original subdivision certificates to be delivered to Messrs Kinghorn Associates who would be doing the transfer.
26	14/01/2009	Letter to Messrs DF Malherbe asking for their assistance in obtaining the signature of the Deed of Sale sent to their client, Mr Kambueshe, on 22 August 2008.
27	03/02/2009	Letter to Mr Kambueshe by the General Manager: Corporate Services & Human Resources reminding him to sign and return the Deed of Sale and requesting the progress on the subdivision of Erf 63.
28	13/02/2009	Email from Mr Kambueshe to General Manager: Corporates Services & Human Resources and Manager: Corporate Services indicating he wants to register the property in a Closed Corporation and that time would be required to register such CC.
29	26/02/2009	Email from Property Officer to Mr Kambueshe enquiring when the registration of the CC is expected.
30	26/02/2009	Email from Mr Kambueshe to Property Officer that the General Manager: Corporate Services & Human Resources has 'written information' on the issue.
31	08/06/2009	Letter from Messrs DF Malherbe supplying the Founding Statement of Erf

		<i>Sixty Three Swakopmund CC and requesting Council to re-advertise the sale in the media in terms of the new CC.</i>
32	16/07/2009	<p><i>It was recommended to the Management Committee:</i></p> <p>(a) <i>That Council turn down the application of Messrs Erf Six Three Swakopmund CC to purchase Erf 63, Mondesa.</i></p> <p>(b) <i>That Erf 63, Mondesa be offered for sale by way of public auction/ closed bid at an upset of N\$ 967 481. 61 +15% VAT (if applicable).</i></p> <p style="text-align: center;"><i>OR</i></p> <p><i>That Council's resolution of 24 August 2008 and 31 July 2008 in respect of the sale of a Portion of Erf 63, Mondesa to Mr J Kambueshe be repealed and substituted by the following:</i></p> <p>(a) <i>That Council approves the alienation of a portion of Erf 63 Mondesa, measuring 17 452.74m² to Messrs Erf Sixty Three Swakopmund CC for the development of a shopping centre.</i></p> <p>(b) <i>That the purchase price of a Portion of Erf 63, Mondesa be calculated with 5% as follows:</i></p> <ul style="list-style-type: none"> ✓ 2006 = N\$48.05/m² x 17 452,74m² = N\$ 838 604.15 ✓ 2007 = N\$838 604.15 x 5 % (N\$41 930.20) = N\$877 534.35 ✓ 2008 = N\$877 534.35 x 5 % (N\$43 876.71) = N\$921 411. 06 ✓ 2009 = N\$921 411. 06 x 5 % (N\$46 070.55) = N\$967 481. 61 +15% VAT (if applicable) <p>(c) <i>That Council reserves the right of first refusal to obtain the immovable property for a period of 5 years on the same terms as being offered to Erf Sixty Three Swakopmund CC, which right shall have to be exercised within a period of 60 days from the date of the offer coming to Council's knowledge.</i></p> <p>(d) <i>That sufficient parking for the public, sufficient delivery, off-loading facilities and adequate access to the aforementioned, be provided on the premises.</i></p> <p>(e) <i>That the appropriate rezoning be made and that no betterment fee be applicable, as the erf price was determined at a market related price based on a business zoning.</i></p> <p>(f) <i>That no building plans be approved by the Building Control Section unless proof can be supplied that the necessary statutory requirements have been complied with.</i></p> <p>(g) <i>That Messrs Erf Sixty Three Swakopmund CC take note that no rights will accrue to them unless all the following conditions are complied with in full and all the relevant authorities have given the necessary permission, if applicable:</i></p> <ul style="list-style-type: none"> (i) <i>That a deposit of at least N\$50 000.00 (to be increased in the discretion of Council) be required of the applicant to cover all fees and costs to Council, prior to attending to the statutory processes.</i> (ii) <i>Should a balance remain after Council's costs have been deducted from the deposit in (i) above, covered, it will be refunded to the applicant.</i> (iii) <i>The applicant shall be required to pay the above deposit within 90 days from the Council resolution approving the purchase price, failing which the Council resolution will automatically be revoked.</i> (iv) <i>The deed of sale shall be drafted and signed by all parties within 12 months from date of this Council resolution failing which the offer to sell shall lapse.</i>

		<p>(v) Should there be objections against the proposed development, the 12 month period within which the transaction must be completed in terms of the Local Authorities Act 23 of 1992, as amended, will commence upon receipt of the Minister's favourable response.</p> <p>(vi) Applicant is not permitted to cede, assign or alienate their right or interest in the property or alienate the property to a 3rd party in any way before all the relevant conditions contained in the agreement of sale are fulfilled.</p> <p>(vii) No change of membership of the Close Cooperation may take place without the prior written approval of Council</p> <p>(viii) That the requirements regarding the alienation of immovable property as prescribed in the Local Authorities Act, Act 23 of 1992, (as amended), and the Townships Ordinance 11 of 1963 respectively, be dealt with successfully.</p> <p>(ix) External and internal services must be completed within 24 months from date of sale.</p> <p>(x) The whole development project must be completed within 48 months from date of sale and if no development is made in terms of the conditions of the contract, the property shall revert to Council without any compensation to the purchaser.</p> <p>(xi) All costs with regard to the transaction to be for the account of the applicant.</p> <p>(xii) That the developments must comply with the provisions of the Town Planning Scheme.</p> <p><i>It was recommended by the Management Committee:</i></p> <p>(a) That Council turn down the application of Messrs Erf Six Three Swakopmund CC to purchase Erf 63, Mondesa.</p> <p>(b) That Council's offer to sell Erf 63 Mondesa, 17 452.74m² in extent to Mr J Kambueshe at a purchase price of N\$48.05/m² x 17 452,74m² = N\$838 604.15 + 15% VAT N\$125 790.62 for the total amount of N\$964 394.77, remain and should he not accept the terms and pay the purchase price within 90 days, the transaction be cancelled.</p> <p>(c) That if the transaction is cancelled, the property be offered for sale by way of public auction/closed bid at an upset of N\$ 967 481. 61 +15% VAT (if applicable).</p>
33	30/07/2009	<p>At the Council meeting it was recommended and resolved:</p> <p>(a) That Council turn down the application of Messrs Erf Six Three Swakopmund CC to purchase Erf 63, Mondesa.</p> <p>(b) That Council's offer to sell Erf 63 Mondesa, 17 452.74m² in extent to Mr J Kambueshe at a purchase price of N\$48.05/m² x 17 452,74m² = N\$838 604.15 + 15% VAT N\$125 790.62 for the total amount of N\$964 394.77, remain and should he not accept the terms and pay the purchase price within 90 days, the transaction be cancelled.</p> <p>(c) That if the transaction is cancelled, the property be offered for sale by way of public auction/ closed bid at an upset of N\$ 967 481. 61 +15% VAT (if applicable).</p>
34	31/07/2009	Letter to Messrs DF Malherbe & Partners informing them of Council's decision.
35	31/07/2009	Letter to Mr Kambueshe informing him of Council's decision and asking him to indicate in writing whether he wished to proceed with the transaction before 21 August 2009.
36	21/08/2009	Letter from Mr Kambueshe requesting an audience with Council.
37	10/09/2009	<p><i>It was recommended to the Management Committee:</i></p> <p>That Mr J Kambueshe be invited to the Management Committee meeting</p>

		<p>for discussion.</p> <p>It was resolved by the Management Committee:</p> <p>That Mr J Kambueshe be invited to a Management Committee meeting at a date to be determined by the Chief Executive Officer.</p>
38	15/09/2009	<p>Invitation to Mr Kambueshe to a Special Management Meeting on 17 September 2009.</p>
39	17/09/2009	<p>It was recommended to the Special Management meeting:</p> <p>That Mr J Kambueshe be invited to the Management Committee meeting for discussion.</p> <p>At the Special Management meeting it was resolved:</p> <p>During the discussion of this item Mr J Kambueshe chronicled the events starting from his first application to date. Mr J Kambueshe informed Council that he decided to register a Closed Corporation with his business partner in order to benefit from the tax rebate. He stated that before venturing into the registration of the Closed Corporation he consulted the Chief Executive Officer and the General Manager: Corporate Services and both assured him that such undertaking is possible provided that the transaction is advertised for objections. He stated that he was surprised to learn that Council turned down his application because the Closed Corporation is construed as a different entity despite the assurance obtained from officials. Mr J Kambueshe further explained that he is in the process of registering another Closed Corporation with only himself as the sole member. After various questions were raised and answered to the satisfaction of Council, it was:-</p> <p>(a) That this item be referred back until Mr J Kambueshe submits an application of a Closed Corporation in which he is the sole member.</p> <p>(b) That the Acting General Manager: Corporate Service ascertain whether a price reduction was granted to Mr J Kambueshe or not and report back to Management Committee.</p> <p>(c) That the Chief Executive Officer and the General Manager: Corporate Services provide feedback on the comments made by Mr J Kambueshe regarding the registration of a Closed Corporation.</p> <p>(d) That the Deed of Sale be amended to include a clause providing Council with a right of first refusal should the Closed Corporation apply to change membership.</p>
40	24/09/2009	<p>Letter to Mr Kambueshe from the General Manager: Corporate Services & Human Resources informing him of the Management Committee's resolution and requesting the founding statement of the Close Corporation in question.</p>
41	24/09/2009	<p>Mr Kambueshe receives a copy of all relevant correspondence regarding the sale of Erf 4326 to date on file as per his request.</p>
42	02/10/2009	<p>Email from Mr Kambueshe supplying the founding statement of Pharlap Properties CC of which he was 100% interest holder and again asking Council to reconsider changing the purchase price to that of N\$5.00/m²</p>
43	15/10/2009	<p>It was recommended to and by the Management Committee:</p> <p>That the previous Council's resolutions in respect of the sale of a Portion of Erf 63, Mondesa to Mr J Kambueshe and Messrs Erf Six Three Swakopmund CC be repealed and substituted by the following:</p> <p>(a) That Council approves the alienation of a portion of Erf 63 Mondesa, measuring 17 452.74m² to Pharlap Properties CC for the development of a shopping centre.</p> <p>(b) That the purchase price of a Portion of Erf 63, Mondesa be calculated with 5% as follows:</p> <p>✓ 2006 = N\$ 48.05/m² x 17 452,74m² = N\$ 838 604.15</p> <p>✓ 2007 = N\$ 50.45/m² x 17 452,74m² = N\$ 880 534.35</p> <p>✓ 2008 = N\$ 52.97/m² x 17 452,74m² = N\$ 924 471.63</p> <p>✓ 2009 = N\$ 55.62/m² x 17 452,74m² = N\$970 721.39 +15%</p>

		<p>VAT (if applicable)</p> <p>(c) That Council reserves the right of first refusal to obtain the immovable property for a period of 5 years on the same terms as being offered to Pharlap Properties CC, which right shall have to be exercised within a period of 60 days from the date of the offer coming to Council's knowledge.</p> <p>(d) That sufficient parking for the public, sufficient delivery, off-loading facilities and adequate access to the aforementioned, be provided on the premises.</p> <p>(e) That the appropriate rezoning be made and that no betterment fee be applicable, as the erf price was determined at a market related price based on a business zoning.</p> <p>(f) That no building plans be approved by the Building Control Section unless proof can be supplied that the necessary statutory requirements have been complied with.</p> <p>(g) That Pharlap Properties CC take note that no rights will accrue to them unless all the following conditions are complied with in full and all the relevant authorities have given the necessary permission, if applicable:</p> <p>(i) That a deposit of at least N\$50 000.00 (to be increased in the discretion of Council) be required of the applicant to cover all fees and costs to Council, prior to attending to the statutory processes.</p> <p>(ii) Should a balance remain after Council's costs have been deducted from the deposit in (i) above, covered, it will be refunded to the applicant.</p> <p>(iii) The applicant shall be required to pay the above deposit within 90 days from the Council resolution approving the purchase price, failing which the Council resolution will automatically be revoked.</p> <p>(iv) The deed of sale shall be drafted and signed by all parties within 12 months from date of this Council resolution failing which the offer to sell shall lapse.</p> <p>(v) Should there be objections against the proposed development, the 12 month period within which the transaction must be completed in terms of the Local Authorities Act 23 of 1992, as amended, will commence upon receipt of the Minister's favourable response.</p> <p>(vi) Applicant is not permitted to cede, assign or alienate their right or interest in the property or alienate the property to a 3rd party in any way before all the relevant conditions contained in the agreement of sale are fulfilled.</p> <p>(vii) No change of membership of the Close Cooperation may take place without the prior written approval of Council</p> <p>(viii) That the requirements regarding the alienation of immovable property as prescribed in the Local Authorities Act, Act 23 of 1992, (as amended), and the Townships Ordinance 11 of 1963 respectively, be dealt with successfully.</p> <p>(ix) External and internal services must be completed within 24 months from date of sale.</p> <p>(x) The whole development project must be completed within 48 months from date of sale and if no development is made in terms of the conditions of the contract, the property shall revert to Council without any compensation to the purchaser.</p>
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		<p>(xi) All costs with regard to the transaction to be for the account of the applicant.</p> <p>(xii) That the developments must comply with the provisions of the Town Planning Scheme.</p>
44	29/10/2009	<p>It was recommended to and resolved by Council:</p> <p>That the previous Council resolutions in respect of the sale of a Portion of Erf 63, Mondesa to Mr J Kambueshe and Messrs Erf Six Three Swakopmund CC be repealed and replaced by the following:</p> <p>(a) That the alienation of a portion of Erf 63 Mondesa, measuring 17 452.74m² to Messrs Pharlap Properties CC for the development of a shopping centre be approved.</p> <p>(b) That the purchase price of a Portion of Erf 63, Mondesa be calculated with 5% as follows:</p> <p style="margin-left: 40px;">2006 = N\$ 48.05/m² x 17 452.74m² = N\$ 838 604.15 2007 = N\$ 50.45/m² x 17 452.74m² = N\$ 880 534.35 2008 = N\$ 52.97/m² x 17 452.74m² = N\$ 924 471.63 2009 = N\$ 55.62/m² x 17 452.74m² = N\$ 970 721.39 +15% VAT (if applicable) and that Messrs Pharlap Properties CC indicates on or before 30 November 2009, whether they accept the purchase price.</p> <p>(c) That Council reserves the right of first refusal to obtain the immovable property for a period of 5 years on the same terms as being offered to Messrs Pharlap Properties CC, which right shall have to be exercised within a period of 60 days from the date of the offer coming to Council's knowledge.</p> <p>(d) That sufficient parking for the public, sufficient delivery, off-loading facilities and adequate access to the aforementioned, be provided on the premises.</p> <p>(e) That the appropriate re-zoning be made and that no betterment fee be applicable, as the erf price was determined at a market related price based on a business zoning.</p> <p>(f) That no building plans be approved by the Building Control Section unless proof can be supplied that the necessary statutory requirements have been complied with.</p> <p>(g) That Messrs Pharlap Properties CC takes note that no rights will accrue to them unless all the following conditions are complied with in full and all the relevant authorities have given the necessary permission, if applicable:</p> <p style="margin-left: 40px;">(i) That a deposit of at least N\$50 000.00 (to be increased in the discretion of Council) be required of the applicant to cover all fees and costs to Council, prior to attending to the statutory processes.</p> <p style="margin-left: 40px;">(ii) Should a balance remain after Council's costs have been deducted from the deposit in (i) above, covered, it will be refunded to the applicant.</p> <p style="margin-left: 40px;">(iii) The applicant shall be required to pay the above deposit within 90 days from the Council resolution approving the purchase price, failing which the Council resolution will automatically be revoked.</p> <p style="margin-left: 40px;">(iv) The deed of sale shall be drafted and signed by all parties within 12 months from date of this Council resolution failing which the offer to sell shall lapse.</p> <p style="margin-left: 40px;">(v) Should there be objections against the proposed development, the 12 month period within which the transaction must be completed in terms of the Local Authorities Act 23 of 1992, as amended, will commence upon</p>

		<p>receipt of the Minister's favourable response.</p> <p>(vi) Applicant is not permitted to cede, assign or alienate their right or interest in the property or alienate the property to a 3rd party in any way before all the relevant conditions contained in the agreement of sale are fulfilled.</p> <p>(vii) No change of membership of the Close Cooperation may take place without the prior written approval of Council</p> <p>(viii) That the requirements regarding the alienation of immovable property as prescribed in the Local Authorities Act, Act 23 of 1992, (as amended), and the Townships Ordinance 11 of 1963 respectively, be dealt with successfully.</p> <p>(ix) External and internal services must be completed within 24 months from date of sale.</p> <p>(x) The whole development project must be completed within 48 months from date of sale and if no development is made in terms of the conditions of the contract, the property shall revert to Council without any compensation to the purchaser.</p> <p>(xi) All costs with regard to the transaction to be for the account of the applicant.</p> <p>(xii) That the developments must comply with the provisions of the Town Planning Scheme.</p>
45	03/11/2009	Letter to Mr Kambueshe informing him of Council's resolution and requesting confirmation of the transaction by 30 November 2009 and subsequent hereto, the deposit payment of N\$ 50 000.00 by 19 February 2010.
46	26/11/2009	Email from Mr Kambueshe to the General Manager: Corporate Services & Human Resources accepting the conditions of sale.
47	13/01/2010	Letter from General Manager: Corporate Services & Human Resources to Mr Kambueshe reminding him of the due date for the payment of the N\$50 000.00 deposit being that of 19 February 2010.
48	09/02/2010	Email from Mr Kambueshe to the General Manager: Corporate Services & Human Resources indicating that Pharlap Properties CC is no longer available to be used for the purchase of Erf 63, Mondesa and as such a new CC, Mondesa Properties CC, has been reserved for this purpose. Mr Kambueshe is the 100% interest holder herein.
49	09/02/2010	Email to General Manager: Corporate Services & Human Resources stating that on Council's approval of the new CC, he will transfer the N\$ 50 000.00 deposit.
50	17/02/2010	Letter to Mr Kambueshe from the General Manager: Corporate Services & Human Resources informing him that the Management Committee will recommend to Council on 25 February 2010 to accept the name change and that the said deposit shall then be payable by 1 March 2010.
51	11/02/2010	<p>It was recommended to the Management Committee:</p> <p>(a) That Council approves the alienation of a portion of Erf 63 Mondesa, measuring 17 452.74m² to Messrs Mondesa Properties CC for the development of a shopping centre subject to the conditions as approved by Council on 29 October 2009.</p> <p>(b) That permission be granted to Mr J Kambueshe to transfer a portion of Erf 63, Mondesa in the name of Messrs Mondesa Properties CC on condition that he is the sole member.</p> <p>It was resolved by the Management Committee:</p> <p>That the feedback provided by the General Manager: Corporate Services regarding the discussion with Mr J Kambueshe be noted.</p> <p>It was recommended by the Management Committee:</p> <p>That Council repeals paragraph (a) of its previous resolution of 29 October 2009 under item 11.1.3 and replaces it with the following:</p>

		<p>(a) That Council approves the alienation of a portion of Erf 63 Mondesa, measuring 17 452.74m² to Messrs Mondesa Property Investment CC for the development of a shopping centre subject to the conditions as approved by Council on 29 October 2009 under item 11.1.3 be approved.</p> <p>(b) That permission be granted to Mr J Kambueshe to transfer a portion of Erf 63, Mondesa in the name of Messrs Mondesa Property Investment CC on condition that he is the sole member.</p> <p>(c) That the payment of the N\$50 000.00 deposit required in respect of item 11.1.3 (g) (i) and (iii) by Mr J Kambueshe to Council be effected on 01 March 2010 in line with the feedback received from the General Manager: Corporate Services, failing which the offer to sell the erf will lapse without further notice to Mr J Kambueshe.</p>
52	25/02/2010	<p>At the Council meeting it was recommended and resolved:</p> <p>That Council repeals paragraph (a) of its previous resolution of 29 October 2009 under item 11.1.3 and replaces it with the following:</p> <p>(a) That Council approves the alienation of a portion of Erf 63 Mondesa, measuring 17 452.74m² to Messrs Mondesa Property Investment CC for the development of a shopping centre subject to the conditions as approved by Council on 29 October 2009 under item 11.1.3.</p> <p>(b) That permission be granted to Mr J Kambueshe to transfer a portion of Erf 63, Mondesa in the name of Messrs Mondesa Property Investment CC on condition that he is the sole member.</p> <p>(c) That the payment of the N\$50 000.00 deposit required in respect of item 11.1.3 (g) (i) and (iii) by Mr J Kambueshe to Council be effected on 01 March 2010 in line with the feedback received from the General Manager: Corporate Services, failing which the offer to sell the erf will lapse without further notice to Mr J Kambueshe.</p>
53	26/04/2010	Letter to Kinghorn Associates requesting them to amend the Deed of Sale with the relevant changes as adopted by Council.
54	24/02/2010	Receipt of N\$ 50 000.00 deposit from Mr Kambueshe.
55	26/02/2010	Letter from General Manager: Corporate Services & Human Resources informing Mr Kambueshe of the Council resolution of 25 February 2010 and acknowledging receipt of the deposit.
56	05/03/2010	Letter from General Manager: Corporate Services & Human Resources to Mr Kambueshe indicating that the sale will be advertised with the closing date for objections being 30 March 2010. Should none be forthcoming, he would have to proceed with the subdivision.
57	30/03/2010	The closing date for objections lapse without any objections received.
58	06/04/2010	Letter from the General Manager: Corporate Services and Human Resource to Mr Kambueshe informing him that no objections had been received to the advertised sale by the closing date. The agreement had to be signed within one year from the closing date for objections, thus by 30 March 2011 .
59	26/04/2010	Letter from the General Manager: Corporate Services & Human Resources to Mr Kambueshe supplying a copy of the Townships Board Approval for the subdivision of Erf 63, Mondesa. He is also reminded of the expiration thereof on 19 September 2010 and is requested to revert back on the progress of the appointment of a land surveyor to attend to the survey of the relevant portion to be sold to him.
60	08/10/2010	Letter to Mr Kambueshe accompanying the Deed of Sale and requesting his signing thereof and for it to be returned by 25 October 2010. He was also informed that the subdivision certificate from the Townships Board had expired on 19 September 2010 and that he would thus need to re-apply therefor. After obtaining that, he would then have to appoint a surveyor to survey the newly created portion of land and submit such diagrams to the Surveyor General for approval. Thereafter the rezoning from 'public open space' to 'general business' could be attended to.
61	22/10/2010	The Deed of Sale was signed by Mr Kambueshe.
62	03/11/2010	Letter from the General Manager: Corporate Services & Human Resources to Mr Kambueshe indicating the relevant steps he has to take as prescribed in the Deed of Sale in order to adhere to those terms.
63	01/12/2010	Letter from the General Manager: Corporate Services & Human Resources

		<i>to Mr Kambueshe supplying him copies of the approved erf diagram.</i>
64	02/12/2010	<i>Letter to Messrs Kinghorn Associates supplying them with Township's Board approval and instructing them to attend to the registration of a certificate of registered title of Erf 4326, the newly created property.</i>
65	01/02/2011	<i>Letter to Messrs Kinghorn Associates supplying a copy of the certificate for closure and instruction to attend to the transfer on receipt of the purchase price.</i>
66	01/02/2011	<i>Letter to Mr Kambueshe informing him that the closure certificate had been obtained and a copy thereof also supplied to Messrs DF Malherbe & Partners. It was also requested that he proceed with the rezoning of the property.</i>
67	16/02/2011	<p><i>Letter to Mr Kambueshe requesting him to submit copies of the founding statement documentation pertaining to Mondesa Property Investment CC to Messrs Kinghorn Associates. Clause 4A of the Deed of Sale states that:</i></p> <p><i>"The purchaser shall, within 30 (thirty) days from the date of signature hereof, be entitled to nominate Messrs Mondesa Property Investment CC as purchaser of the property. This right to nominate is, however subject to:</i></p> <ol style="list-style-type: none"> <i>a) Juuso Kambueshe, be and remain the sole member of the said close corporation for the entire duration of the restraint of alienation referred to in 7.2 below; and</i> <i>b) Messrs Mondesa Property Investment CC unconditionally assumes and accepts all obligations of Juuso Kambueshe in terms of this deed of sale. Provided, however that Juuso Kambueshe shall remain liable for all obligations arising from this agreement as Principal Debtor on behalf of the said nominee toward the Seller.</i> <p><i>Accordingly any change in the members' interest of Messrs Mondesa Property Investment CC can only take place with the written permission of Council.</i></p>
68	08/04/2011	<p><i>Memo from Property Officer to General Manager: Corporate Services & Human Resources indicating that the following had been requested from Mr Kambueshe but was still outstanding:</i></p> <ol style="list-style-type: none"> <i>1) After Deed of Sale signature on 22 October 2010, no bank guarantee had been received.</i> <i>2) On 16 February 2011 Mr Kambueshe had been informed his nomination letter to nominate Mondesa Property CC was outstanding and nothing had been received.</i> <i>3) On 8 March 2011 Messrs Kinghorn Associates requested a copy of Mr Kambueshe's ID document and such request was forwarded to his email address as well as several unreachable phone calls to his cell phone was made. The ID document was still outstanding.</i> <i>4) An email was sent to Winplan on 8 March 2011 requesting the supply of the original Townships Board and Subdivision Certificate but no response was received.</i>
69	12/04/2011	<i>Email conversation between Mr Kambueshe and Property Officer requesting clarity on what documentation was required following the Property Officer's emails. ID document was then supplied.</i>
70	18/04/2011	<i>Letter from General Manager: Corporate Services & Human Resources to Mr Kambueshe referring to the letter of 16 February 2011 requesting the nomination letter. The relevant letter is required by 29 April 2011 failing which the matter would be submitted to Council in May 2011 requesting the land to be transferred into Mr Kambueshe's personal name.</i>
71	19/05/2011	<p><i>It was recommended to the Management Committee:</i></p> <p><i>That Mr J Kambueshe be requested to submit a nomination letter on / before 31 May 2011, failing which the erf will be transfer into his personal name.</i></p> <p><i>At the Management Committee Meeting it was resolved:</i></p> <p><i>During the discussion of this item Councillor J Kambueshe declared his interest in the matter and recused himself from the discussion. It was:-</i></p> <ol style="list-style-type: none"> <i>(a) That the interest declared by Councillor J Kambueshe and the fact that he left the chambers during the discussion be noted.</i> <i>(b) That Mr J Kambueshe submits a nomination letter on / before 31 May</i>

		<p>2011, failing which the Erf will be transferred into his personal name.</p> <p>(c) That in future no preferential treatment should be given to applicants regardless of their social status in the community.</p>
72	26/05/2011	Letter from the General Manager: Corporate Services & Human Resources to Messrs Kinghorn Associates accompanying the nomination letter for Mondesa Property Investment CC.
73	22/07/2011	The Power of Attorney and Declaration by Seller is received from Messrs Kinghorn Associates and signed on 29 July 2011.
74	25/07/2011	Letter from Messrs Winplan supplying the original subdivision certificate after payment of their account was received on 21 July 2011.
75	26/07/2011	Email confirmation of receipt of the original Townships Board approval and subdivision certificate by Messrs Kinghorn Associates.
76	22/11/2011	Letter from Messrs Kinghorn Associates to the Chief Executive Officer stating that no purchase price has been paid nor was a guarantee received. They are thus unable to proceed with the transfer. Mr Kambueshe informed them that he has applied for a loan to the bank and will report back to them in about 2 weeks' time.
77	12/01/2012	<p>It was recommended to the Management Committee:</p> <p>a) That Council takes note that Messrs Mondesa Property Investment CC has not paid / secure the purchase price for the sale of Erf 4326, Mondesa.</p> <p>(b) That upon confirmation by Messrs Kinghorn Associates that the purchase price was not paid / secured to date, Messrs Mondesa Property Investment CC be given an extension of time until 29 February 2012 to secure the payment of the purchase price of Erf 4326, Mondesa, failing which the sale transaction will be cancelled in terms of Clause 3.4 of the signed Deed of Sale.</p> <p>At the Management Committee Meeting it was resolved:</p> <p>During the discussion of this item the General Manager: Corporate Services and Human Resources reported that Mr J Kambueshe of Messrs Mondesa Property Investment CC visited his office on 11 January 2012 and stated that the required guarantee will be provided by Messrs Government Institution Pension Fund before 06 February 2012.</p> <p>(a) That the report by the General Manager: Corporate Services and Human Resources regarding the visit of Mr J Kambueshe of Messrs Mondesa Property Investment CC and that he offered to provide the required guarantee before 06 February 2012 be noted.</p> <p>(b) That, in future, such communication between officials and the developer be confirmed in writing by the developer for record purposes.</p> <p>(c) That it be noted that Messrs Mondesa Property Investment CC has not paid / secure the purchase price for the sale of Erf 4326, Mondesa.</p> <p>(d) That the General Manager: Corporate Services and Human Resources report back to the next Management Committee regarding progress made on the matter.</p>
78	13/01/2012	Letter to Mr Kambueshe from the General Manager: Corporate Services & Human Resources confirming Mr Kambueshe's visit to the General Manager's office on 11 January 2012 and the commitment given that the purchase price will be secured by a loan from GIPF by 6 February 2012. Mr Kambueshe was also informed of the Management Committee resolution of 12 January 2012.
79	26/01/2012	Email communication by Mr Kambueshe with the Corporate Officer: Properties requesting an audience with Council as an apparent misunderstanding regarding the loan with GIPF was claimed.
80	16/02/2012	<p>It was recommended to the Management Committee:</p> <p>That the Management Committee determines a date for a Special Management Committee to grant Mr J Kambueshe of Mondesa Property Investment CC an opportunity to clarify why the purchase price for Erf</p>

		<p>4326, Mondesa is not yet secured.</p> <p>At the Management Committee meeting it was resolved:</p> <p>That Mr J Kambueshe of Mondesa Property Investment CC be invited to a Special Management Committee meeting scheduled for 23 February 2012 at 18H30.</p>
81	20/02/2012	<p>Letter from the General Manager: Corporate Services & Human Resources to Mr Kambueshe informing him of the Management Committee resolution.</p>
82	23/02/2012	<p>It was recommended to the Special Management Committee:</p> <p>That the concerns of Mr J Kambueshe regarding the transfer of Erf 4326 (a portion of Erf 63, Mondesa), Mondesa in the name of Messrs Mondesa Property Investment CC be noted.</p> <p>At the Special Management Committee meeting of 23 February 2012 it was resolved:</p> <p>That this item be referred back due to the unavailability of the applicant and that it be resubmitted to the next Special Management Committee meeting to be held on a date to be determined by the Chief Executive Officer.</p>
83	09/03/2012	<p>Letter from the General Manager: Corporate Services & Human Resources to Mr Kambueshe noting his apology for not being able to attend the Special Management Meeting on 23 February 2012. In terms of clause 7.2 of the signed deed of sale Mr Kambueshe is given 21 days until 30 March 2012 to provide a bank guarantee to secure the purchase price failing which the contract will be cancelled without the need to give any notice to this extent.</p>
84	02/04/2012	<p>Letter from Messrs Kinghorn Associates enquiring whether the purchase price had been paid or a guarantee supplied to Council.</p>
85	12/04/2012	<p>It was recommended to the Management Committee:</p> <ul style="list-style-type: none"> (a) That the Management Committee determines a date for a Special Management Committee meeting for an audience with Mr J Kambueshe of Mondesa Property Investment CC to clarify why the purchase price for Erf 4326, Mondesa is not yet secured. (b) That Council determines the period within which Messrs Mondesa Property Investment CC must submit a bank guarantee to secure the purchase price plus 15% VAT for the sale of Erf 4326, Mondesa. (c) Should Messrs Mondesa Property Investment CC fail to comply with (b) above, the transaction be cancelled. <p>At the Management Committee Meeting it was resolved:</p> <p>Councillor J Kambueshe declared his interest and left the chambers during discussion of this item.</p> <ul style="list-style-type: none"> (a) That a Special Management Committee meeting be arranged for an audience with Mr J Kambueshe of Mondesa Property Investment CC to clarify the purchase price for Erf 4326, Mondesa on Tuesday, 17 April 2012 at 18h00. (b) That Mr Kambueshe be invited accordingly.
86	12/04/2012	<p>Letter from the General Manager: Corporate Services & Human Resources to Mr Kambueshe informing him of the Management Committee resolution.</p>
87	17/04/2012	<p>It was recommended to the Special Management Meeting:</p> <ul style="list-style-type: none"> (a) That the Management Committee extends the date of the audience with Mr J Kambueshe of Mondesa Property Investment CC to 15 May 2012. (c) That Mr J Kambueshe of Messrs Mondesa Property Investment CC be informed that in order to finalize this long outstanding transaction he confirms his attendance for the above audience, as no further extension for a date for an audience will be considered.

		<p>At the Special Management Meeting it was resolved:</p> <p>(a) That the date of audience with Mr J Kambueshe of Messrs Mondesa Property Investment CC be extended to 16 May 2012.</p> <p>(d) That Mr J Kambueshe of Messrs Mondesa Property Investment CC be informed that in order to finalize this long outstanding transaction he confirms his attendance for the above audience, as no further extension for a date for an audience will be considered.</p>
88	23/04/2012	Letter from the General Manager: Corporate Services & Human Resources to Mr Kambueshe informing him of the Special Management Committee resolution.
89	16/05/2012	<p>It was recommended to the Management Committee:</p> <p>That Mr J Kambueshe of Messrs Mondesa Property Investment CC be given 21 (twenty one) days from the date of Council's resolution (31 May 2012) to secure the purchase price plus 15 % VAT, failing, which the transaction be cancelled without any further notice.</p> <p>At the Management Committee meeting it was resolved:</p> <p>That Mr J Kambueshe of Messrs Mondesa Property Investment CC be given 91 (ninety one) days from the date of this resolution to secure the purchase price plus 15 % VAT, failing, which the transaction be cancelled without any further notice.</p>
90	29/05/2012	Email from Mr Kambueshe to the Chief Executive Officer thanking them for the opportunity to have had an audience on 16 May 2012. He requests Council to set 1 October 2012 as the 'very final deadline' for the securing of the purchase price.
91	14/06/2012	<p>At the Management Committee it was recommended:</p> <p>That Mr J Kambueshe of Messrs Mondesa Property Investment CC be given until 30 September 2012 to secure the purchase price plus 15 % VAT, failing, which the transaction be cancelled without any further notice.</p> <p>At the Management Committee Meeting it was resolved:</p> <p>During the discussion of this item Councillor J Kambueshe declared his interest in the matter and left the chambers during the discussion. It was:-</p> <p>(a) That the interest declared by Councillor J Kambueshe and the fact that he left the chambers during the discussion be noted.</p> <p>(b) That Mr J Kambueshe of Messrs Mondesa Property Investment CC be given until 30 September 2012 to secure the purchase price plus 15 % VAT, failing which the transaction be cancelled without any further notice.</p>
92	19/06/2012	Letter from the General Manager: Corporate Services & Human Resources to Mr Kambueshe informing him of the Management Committee resolution of 14 June 2012.
93	12/09/2012	Letter from the General Manager: Corporate Services & Human Resources to Mr Kambueshe reminding him of the due date to secure payment of 30 September 2012.
94	01/10/2012	Email from Corporate Officer: Properties to Messrs Kinghorn Associates enquiring whether the bank guarantee had been received. Messrs Kinghorn Associates confirmed that none had been received.
95	01/10/2012	Letter from the General Manager: Corporate Services & Human Resources to Mr Kambueshe informing him that due to the fact that the purchase price had not been secured by 30 September 2012, the transaction is cancelled in terms of the Management Committee's resolution of 14 June 2012.
96	11/10/2012	<p>It was recommended to the Management Committee:</p> <p>(a) That the Management Committee takes note that the purchase price plus 15% VAT was not secured by 30 September 2012 and that the transaction is therefore cancelled in terms of the Management Committee resolution passed on 14 June 2012.</p> <p>(b) That Council decides on the sale of Erf 4326, Mondesa i.e. by public auction, invited closed bids, or invite development proposals from the</p>

		<p><i>public.</i></p> <p><i>At the Management Committee meeting it was resolved that:</i></p> <p><i>The Chief Executive Officer requested the permission of the Chairperson to read an email received by Mr J Kambueshe of Mondesa Property Investment CC which permission was granted. The Management Committee after listening took note of the content of the letter and after deliberations resolved:</i></p> <p>(a) <i>That Messrs Mondesa Property Investment CC be requested to submit on or before the 26th of October 2012 a letter from the financial institution that indicates that they require approved building plans in order to provide financial assistance to them.</i></p> <p>(b) <i>That the Management Committee remained informed that the purchase price plus 15% VAT was not secured by 30 September 2012 as resolved by Management Committee on the 14 June 2012.</i></p>
97	12/10/2012	<p><i>Letter from the General Manager: Corporate Services & Human Resources to Mr Kambueshe informing him of the Management Committee resolution of 11 October 2012.</i></p>
98	15/11/2012	<p><i>It was recommended to the Management Committee:</i></p> <p>(a) <i>That Messrs Mondesa Property Investments CC be informed to submit the building plans for the development of a shopping centre on Erf 4326, Mondesa for approval.</i></p> <p>(b) <i>That Council remains with its decision of 25 February 2010 i.e.:</i></p> <p><i>That Council approves the alienation of a portion of Erf 63 Mondesa, measuring 17 452.74m² to Messrs Mondesa Property Investment CC for the development of a shopping centre subject to the conditions as approved by Council on 29 October 2009 under item 11.1.3.</i></p> <p>(c) <i>That Mr J Kambueshe of Messrs Mondesa Property Investment CC be given until 04 January 2013 to secure the purchase price plus 15 % VAT, failing which the transaction be cancelled without any further notice.</i></p> <p><i>At the Management Committee meeting it was resolved:</i></p> <p><i>During the discussion of this item Councillor J Kambueshe declared his interest in the matter and recused himself from the discussion. It was:-</i></p> <p><i>At the Management Committee meeting it was recommended:</i></p> <p>(a) <i>That Messrs Mondesa Property Investments CC be informed to submit the building plans for the development of a shopping centre on Erf 4326, Mondesa for approval.</i></p> <p>(b) <i>That Council remains with its decision of 25 February 2010 i.e.:</i></p> <p><i>That Council approves the alienation of a portion of Erf 63 Mondesa, measuring 17 452.74m² to Messrs Mondesa Property Investment CC for the development of a shopping centre subject to the conditions as approved by Council on 29 October 2009 under item 11.1.3.</i></p> <p>(c) <i>That Mr J Kambueshe of Messrs Mondesa Property Investment CC be given until 31 March 2013 to secure the purchase price plus 15% VAT, failing which the transaction be cancelled without any further notice.</i></p>
99	28/11/2012	<p><i>It was recommended to Council:</i></p> <p>(a) <i>That Messrs Mondesa Property Investments CC be informed to submit the building plans for the development of a shopping centre on Erf 4326, Mondesa for approval.</i></p>

		<p>(b) That Council remains with its decision of 25 February 2010 i.e.:</p> <p>That Council approves the alienation of a portion of Erf 63 Mondesa, measuring 17 452.74m² to Messrs Mondesa Property Investment CC for the development of a shopping centre subject to the conditions as approved by Council on 29 October 2009 under item 11.1.3.</p> <p>(c) That Mr J Kambueshe of Messrs Mondesa Property Investment CC be given until 31 March 2013 to secure the purchase price plus 15% VAT, failing which the transaction be cancelled without any further notice.</p> <p>At the Council meeting it was resolved:</p> <p>During the discussion of this item Councillor J Kambueshe declared his interest in the matter and recused himself from the discussion. Councillor F Hamukwaya proposed that Councillor P V Steinkopff chair the meeting but the proposal was not accepted by Councillor P V Steinkopff as he indicated that he wish to contribute to the item. Councillor P V Steinkopff then proposed that Alderman E //Khoeseb chair the meeting. The proposal was accepted by the nominee and seconded by Councillor F Hamukwaya. Councillor P V Steinkopff expressed dissatisfaction with the way this item was dealt with seeing that the project had not commenced yet and after 6 years, the purchase price has not been paid, representing a loss for Council and good investment again for the purchaser. He indicated that he does not support the resolution taken by Council on this item. It was:-</p> <p>(a) That the interest declared by Councillor J Kambueshe and the fact that he left the chambers be noted.</p> <p>(b) That it be recorded that Councillor P V Steinkopff does not support the resolution taken by Council on this item.</p> <p>(c) That Messrs Mondesa Property Investments CC be informed to submit the building plans for the development of a shopping centre on Erf 4326, Mondesa for approval.</p> <p>(d) That Council remains with its decision of 25 February 2010 i.e.:</p> <p>That Council approves the alienation of a portion of Erf 63 Mondesa, measuring 17 452.74m² to Messrs Mondesa Property Investment CC for the development of a shopping centre subject to the conditions as approved by Council on 29 October 2009 under item 11.1.3.</p> <p>(e) That Mr J Kambueshe of Messrs Mondesa Property Investment CC be given until 31 March 2013 to secure the purchase price plus 15% VAT, failing which the transaction be cancelled without any further notice.</p>
100	30/11/2012	Letter from the General Manager: Corporate Services & Human Resources to Mr Kambueshe informing him of the Council resolution.
101	29/01/2013	Letter from Messrs Kinghorn Associates to the Chief Executive Officer requesting him to sign the Application for Certificate of Registered Title of erf 4326, Mondesa.
102	04/02/2013	Letter from the General Manager: Corporate Services & Human Resources to Mr Kambueshe reminding him of the due date of 31 March 2013 to secure the payment.
103	28/02/2013	Letter from the Anti-Corruption Commission to the Chief Executive Officer informing him that they are investigating the alledged corrupt practices in respect of the sale of erf 4326, Mondesa requesting information on the matter.
104	15/03/2013	Letter to the Anti-Corruption Commission from the General Manager: Corporate Services & Human Resources acknowledging their letter of 28 February 2013 and undertaking to revert back to them.
105	15/03/2013	Letter from Messrs Kinghorn Associates to the Chief Executive Officer informing Council that the register of Title for Erf 4326 was registered.
106	22/03/2013	Letter from the General Manager: Corporate Services & Human Resources to Mr Kambueshe reminding him of the due date to secure the payment price by 31 March 2013.
107	08/04/2013	Receipt of a formal Declaration of Interest by Mr Kambueshe declaring his

		<i>interest in terms of Section (19) (1) of the Local Authorities Act no. 23 of 1992 as amended as Managing Director of Mondesa Property Investment CC.</i>
108	09/04/2013	<i>Letter of Undertaking from Messrs DF Malherbe & Partners securing the purchase price for Mr Kambueshe.</i>
109	11/04/2013	<p><i>It was recommended to the Management Committee:</i></p> <p>(a) <i>That Council takes note of the cancellation of the sale of Erf 4326, Mondesa to Messrs Mondesa Property Investment CC as per point (e) of Council's resolution passed on 24 November 2012.</i></p> <p>(b) <i>That a separate submission be tabled to the Management Committee regarding the future sale of Erf 4326, Mondesa, measuring 17 453m².</i></p> <p><i>At the Management Committee meeting it was resolved that:</i></p> <p>(a) <i>That the Anti-Corruption Commission be informed about the letter of undertaking for payment received from Messrs Mondesa Property Investment CC on 09 April 2013, through their legal representatives, Messrs Malherbe and Partners and that the proof thereof be attached to the letter.</i></p> <p>(b) <i>That the General Manager: Corporate Services and Human Resources obtains legal advice from Council's Legal Advisors on how to proceed with the matter and that the General Manager: Corporate Services and Human Resources reports back before the next Council meeting.</i></p>
110	11/04/2013	<i>Letter from the General Manager: Corporate Services & Human Resources to request Messrs Kinghorn Associates' legal opinion on the consequences should Council decide to accept the funds and proceed with the transfer or should Council decide to cancel the erf.</i>
111	11/04/2013	<i>Letter from the General Manager: Corporate Services & Human Resources to the Anti-Corruption Commission detailing the history of the sale of Erf 4326 to Mr Kambueshe.</i>
112	17/04/2013	<i>Legal opinion was received from Messrs Kinghorn Associates. (Due to Attorney-Client privilege, the document is not attached)</i>
113	25/04/2013	<p><i>It was recommended to the Special Management Committee in camera:</i></p> <p><i>That Council considers the legal opinion received and base its' decision whether or not to proceed with the transaction for the sale of Erf 4326, Mondesa thereon.</i></p> <p><i>At the Special Management Committee in camera it was resolved that:</i></p> <p><i>That the Chief Executive Officer requests Council's Legal Advisor to word the resolution and notification to the purchaser which is to be submitted to a Special Management Committee meeting for consideration.</i></p>
114	30/04/2013	<i>Letter to Messrs Kinghorn Associates informing them of the request from the Special Management Committee meeting of 25 April 2013.</i>
115	06/05/2013	<i>Communication received from Messrs Kinghorn Associates.</i>
116	16/05/2013	<p><i>It was recommended to the Management Committee:</i></p> <p><i>That the Management Committee considers the recommendation as stated under points 1, 2 and 3 of Messrs Kinghorn Associates' letter dated 6 May 2013.</i></p> <p><i>At the Management Committee it was resolved:</i></p> <p>(a) <i>That the interest declared by Councillor J Kambueshe and the fact that he left the chambers during the discussion be noted.</i></p> <p>(a) <i>That the presentation given by Mr J Kambueshe of Messrs Mondesa Property Investment CC to Management Committee during the meeting be noted.</i></p> <p>(b) <i>That the presentation by Mr J Kambueshe of Messrs Mondesa Property Investment CC be discussed at a Special Management Committee meeting to be arranged for 24 May 2013 at 08H00.</i></p> <p>(c) <i>That Messrs Kinghorn be requested to attend the meeting and brief</i></p>

		<i>Council on the presentation given by Mr J Kambueshe.</i>
117	20/05/2013	Letter from the Anti-Corruption Commission to the Chief Executive Officer requesting him to indicate the current position of Council on the matter.
118	22/05/2013	Letter sent to Messrs Kinghorn Associates requesting their attendance at the Management Committee of 27/5/13.
119	24/05/2013	Legal opinion was received from Messrs Conradie & Damaseb as requested by the alternate Chairperson of the Management Committee via the Acting Chief Executive Officer. (Due to Attorney-Client privilege, the document is not attached)
120	27/05/2013	<p>It was recommended to the Special Management Committee:</p> <ul style="list-style-type: none"> (a) That the legal opinion dated 06 May 2013 of Messrs Kinghorn Associates be noted and accepted. (b) That the Deed of Sale entered into between Council and Messrs Mondesa Property Investment CC dated 22 October 2010 has lapsed by reason of non-fulfilment of the resolute condition contained in clause 3.1.3 of the Deed of Sale. (c) That the Deed of Sale is incapable of being cancelled since it has already lapsed. (d) That the lapsing of the Deed of Sale renders all resolutions and actions taken subsequent to the lapsing of the Deed of Sale, without effect or legal consequence. (e) That Messrs Kinghorn Associates be instructed to return the Letter of Undertaking issued by Messrs D F Malherbe & Partners (the legal practitioners of Messrs Mondesa Property Investment CC) to Messrs D F Malherbe & Partners and to notify the same of the status of the Deed of Sale and of all resolutions and actions recorded in (i) and (iii) above. (f) That all costs and disbursements incurred by Council in connection with the Deed of Sale or the lapsing thereof, inclusive of legal costs, be defrayed out of the deposit paid by Messrs Mondesa Property Investments CC at the time, and the balance, if any, be repaid to Messrs Mondesa Property Investments CC. <p>At the Special Management Committee it was resolved that:</p> <ul style="list-style-type: none"> (a) That the answers and opinions provided by Ms H Ahrens of Messrs Kinghorn Associates be noted. (b) That the legal opinion received from Messrs Conradie and Damaseb Legal Practitioners be noted. (d) That it be recorded that Councillor N N Salomon stated that he will not be part of any other decision apart from the recommendation submitted by Messrs Kinghorn Associates. (e) That the Acting Chief Executive Officer submits this item for discussion as an additional item at the Budget Meeting Scheduled for 29 May 2013 at 08:00.
121	13/06/2013	<p>It was recommended to the Management Committee:</p> <ul style="list-style-type: none"> (a) That the legal opinion dated 06 May 2013 of Messrs Kinghorn Associates be noted and accepted. (b) That the Deed of Sale entered into between Council and Messrs Mondesa Property Investment CC dated 22 October 2010 has lapsed by reason of non-fulfilment of the resolute condition contained in clause 3.1.3 of the Deed of Sale. (c) That the Deed of Sale is incapable of being cancelled since it has already lapsed. (d) That the lapsing of the Deed of Sale renders all resolutions and

		<p>actions taken subsequent to the lapsing of the Deed of Sale, without effect or legal consequence.</p> <p>(e) That Messrs Kinghorn Associates be instructed to return the Letter of Undertaking issued by Messrs D F Malherbe & Partners (the legal practitioners of Messrs Mondesa Property Investment CC) to Messrs D F Malherbe & Partners and to notify the same of the status of the Deed of Sale and of all resolutions and actions recorded in (i) and (iii) above.</p> <p>(f) That all costs and disbursements incurred by Council in connection with the Deed of Sale or the lapsing thereof, inclusive of legal costs, be defrayed out of the deposit paid by Messrs Mondesa Property Investments CC at the time, and the balance, if any, be repaid to Messrs Mondesa Property Investments CC.</p> <p>At the Management Committee meeting it was recommended:</p> <p>During the discussion of this item the Chief Executive Officer, the General Manager: Finance and the Manager: Corporate Services advised Council to follow the legal advice provided by Messrs Kinghorn Associates i.e. to cancel the transaction.</p> <p>After extensive deliberations, the Management Committee resolved to recommend as follows:-</p> <p>(a) That the legal opinions of Messrs Kinghorn Associates dated 06 May 2013 and Messrs Conradie and Damaseb dated 24 May 2013 be noted.</p> <p>(b) That Council proceed with the sale of Erf 4326 (a portion of Erf 63, Mondesa) Mondesa to Messrs Mondesa Property Investment CC on the same terms and conditions as approved by Council based on the opinion expressed by Messrs Conradie & Damaseb Attorneys.</p> <p>(c) That it be recorded that Councillor N N Salomon stated that he will not be part on any other decision apart from the recommendation submitted by Messrs Kinghorn Associates.</p> <p>(The same submission that was presented to the Special Management Committee on 27 May 2013 was used for the Management Committee meeting of 13 June 2013. All involved were informed to bring along the relevant item as it appeared in the Special Management Committee agenda of 27 May 2013.)</p>
122	27/06/2013	<p>It was recommended to the Council meeting:</p> <p>(a) That the legal opinions of Messrs Kinghorn Associates dated 06 May 2013 and Messrs Conradie and Damaseb dated 24 May 2013 be noted.</p> <p>(b) That Council proceed with the sale of Erf 4326 (a portion of Erf 63, Mondesa) Mondesa to Messrs Mondesa Property Investment CC on the same terms and conditions as approved by Council based on the opinion expressed by Messrs Conradie & Damaseb Attorneys.</p> <p>(c) That it be recorded that Councillor N N Salomon stated that he will not be part on any other decision apart from the recommendation submitted by Messrs Kinghorn Associates.</p> <p>It was resolved at the Council meeting that:</p> <p>That this item be withdrawn from the Agenda and be resubmitted at the next Management Committee meeting.</p>
123	02/07/2013	Letter from the Chief Executive Officer to the Anti-Corruption Commission in reply to their letter of 20 May 2013 supplying the details of events since 31 March 2013.
124	29/07/2013	Letter from the Anti-Corruption Commission to the Chief Executive Officer requesting whether Council took a decision on the sale of erf 4326,

		<i>Mondesa.</i>
125	08/08/2013	<i>Letter from the Chief Executive Officer to the Anti-Corruption Commission informing them that since the item was withdrawn from the Council agenda on 27 June 2013, no further decisions had been taken.</i>

B. After the matter was considered, the following was:-

RECOMMENDED:

- (a) That the legal opinions of Messrs Kinghorn Associates dated 06 May 2013 and Messrs Conradie and Damaseb dated 24 May 2013 be noted.
 - (b) That Council proceed with the sale of Erf 4326 (a portion of Erf 63, Mondesa) Mondesa to Messrs Mondesa Property Investment CC on the same terms and conditions as approved by Council based on the opinion expressed by Messrs Conradie & Damaseb Attorneys.
 - (c) That it be recorded that Councillor N N Salomon stated that he will not be part on any other decision apart from the recommendation submitted by Messrs Kinghorn Associates.
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