

FARM 39 TRANSFORMATION: THE LOST 18 YEARS

PART 8: AGREEMENTS AND DISAGREEMENTS

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Ward 2 Forum
SERVING THE COMMUNITY TOGETHER

Ward 2 Forum Team
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The Contract and Project Brief

The contract between TWKM and Urban Dynamics of 17 January 2003 covers the appointment of the latter to facilitate the transformation process for Farm 39, in terms of Act 94 of 1998. ([Urban Dynamics – Summary Report & Recommendations](#))

The main objective is the transfer of land to individual owners/entities. It will be funded by Department of Land Affairs, and will comprise 5 phases:

- Project structuring/preparation;
- Regularisation of land rights;
- Land Use planning proposals;
- 18 months transformation period;
- Repeal of Act 9.

Responsibilities of Urban Dynamics:

The provision of detailed information to ensure that TWKM will be in a position to make authorised and informed decisions regarding land rights and to effectively implement relevant policies;

- Incorporation of all legal requirements from Dept of Land Affairs (now DRDLR);
- Accommodate local inhabitants to assist with the process where and when required;
- Submission of TWKM's application for funding from the Department;
- Appoint any other professionals that might be required for the project;
- Submission of regular progress reports to the TWKM Manager of Planning.

Responsibilities of TWKM:

- TWKM will act as the Management Agent of the Department of Land Affairs;
- TWKM will handle all media enquiries;
- TWKM will assist in establishing the relevant committees to execute this project;
- Responsibility for signing all necessary documents for the Department of Land Affairs;
- TWKM will take necessary decisions timeously with due consideration of the project program.

This contract document is considered to be inadequate as it omits the primary importance of the decision as to how and when TWKM will determine to which entity the land concerned should be transferred, the extent of the consultation process with the community and the level of support from all the community for the final decision.

The fundamental issue since the start of discussions seems to have been the assumption, if not absolute desire, by TWKM that they would be the 'entity' decided upon by the Minister regardless of any alternative preferred by the community. The reason for this attitude can only be presumed to relate to TWKM's desire to acquire the very considerable asset value of Farm 39 for the municipality.

Constitution of the Genadendal Transformation Committee

April 2005 (summarised):

The Act provides that an elected committee should make proposals concerning to which entity the land must be transferred, and that a committee be elected by residents. The elected committee must give a written report to the Minister which recommends which entity to be transferred to.

The Transformation Committee shall manage the process of recommending the choice of an entity, in accordance with the requirements of the Act, and including the following:

- Background to the establishment of the Transformation Committee.
- Composition of the Transformation Committee.
- Description of the process followed by the transformation Committee.
- A plan for the implementation of the transformation process.
- To establish participation of the community in the implementation of the transformation process.

The Committee consists of 27 representatives from different organisations, sectors, and community members present on 26 October 2004. The community has also selected three additional representatives.

The Committee will be responsible for communicating the affairs of the committee to the members.

If it becomes necessary during the course of the committee for members to replace members of the Executive committee, they may be appointed from the existing members at a committee meeting.

The Transformation Committee will maintain a record of all meetings, record minutes and send notifications to members.

A Quorum shall consist of 50% plus one of all member organizations.

[Transformation Committee Constitution](#) and [Code of Conduct](#) both available on the Ward 2 Forum Website.

The Main Objectives

The main objectives of the Transformation Committee are to:

- Assist TWKM with the gazetted Notice for the transformation plan (completed);
- Facilitate community decisions on how the land will be managed in the future;
- Consult at all times with the community and keep them abreast of developments in the transformation process;
- Report to the Minister on the recommendations from the community about the entity or entities to which the land is to be transferred.

The Transformation Committee must:

- Allow all residents to have a fair chance to participate in the decision-making process regarding the transfer and administration of land;
- Not discriminate against any citizen;
- Make minutes and any required information about the transformation process available to TWKM;
- Set up sub-committees where needed, by co-opting members of the special interest organisation/sector concerned.

Changes in the Constitution

The Constitution may be amended only if the majority of members agree, with the understanding that the amendment should not be in conflict with the provisions of Act 94 of 1998 and the purpose of the transformation process will not be affected.

According to Urban Dynamics (reference 1), the Genadendal Transformation Committee did in fact manage, through an extended period of time, to properly and materially represent the interests of the community, and retain their support. The basic representations made by the leadership structure have never been materially challenged by other community members.

More recently, there have been accusations made that question the legitimacy of this representation. They have never been substantiated.

The Houw Hoek Agreement September 2007

The [Houw Hoek Agreement](#) resulted from mediation between the Genadendal Transformation Committee (representing the community), the Minister of Land Affairs and TWK Municipality, with full and final settlement of all claims in respect of the High Court case No. 926/07, which was made an order of court. The main points are:

- The inner Commonages, being largely the riverine areas around which the housing is situated, much of which has been or still is used as allotments and gardens totaling about 342 ha, is not excluded from the Trust Land, as had been demanded by TWKM;
- There shall be an immediate moratorium on the sale of Trust Land;
- The list of residents, who are the legal beneficiaries as at 2 November 1998, shall be revised, updated and completed;
- A new Steering Committee was set up to monitor and oversee the transformation process;
- Urban Dynamics agreed to withdraw after handing over to new consultants to be appointed by TWKM in order to complete the contract.

The Agreement was supported by all parties, and signed by Dept of Land Affairs and the Transformation Committee. TWKM signed the Agreement a year later.

At a meeting in 2010 between TWKM, Urban Dynamics and DRDLR (reference 2: the new Department created from the Dept of Land affairs in 2009), in the absence of any members of the Transformation Committee, it was agreed that:

- The [Houw Hoek Agreement](#) cannot be implemented and should not be revised;
- The transformation process must proceed with Urban Dynamics still the Consultant;
- The residents register does not require further updating;

- There is no need for a referendum.

Contrary to the agreed intent of the [Houw Hoek Agreement](#), the DRDLR requested TWKM to complete the original agency agreement, which Urban Dynamics did in 2010. Their report is incomplete and heavily biased towards the recommendation that all the land be transferred to TWKM. Participation with the residents was limited, objections were ignored. An interdict was applied for by the Transformation Committee, but apparently failed to prevent the report, with its damaging recommendations, being sent to the Minister.

TWKM wrote to DRDLR in [September 2016](#), saying that they consider themselves in dispute, not with the Transformation Committee, but with the Minister, who they consider is already in a position to make a decision as to whether Farm 39 should be transferred to them as the most suitable municipal entity, which can no longer be delayed. This letter seems intended to further exacerbate the situation.

The Act makes it clear that the requirements of the community, and not those of TWKM, should be paramount.

There has been no further progress on the land transformation issue, despite the [Undertaking by the Theewaterskloof Municipality](#) to do so. Despite this:

- *TWKM have been allowing and assisting illegal occupations throughout Farm 39;*
- *Structures have been erected on the land without the Minister's permission;*
- *TWKM have provided services to illegal occupants;*
- *TWKM have issued clearance certificates to individuals;*
- *Legislation has been initiated against members of the Transformation Committee for non-payment of services.*

Reference 1: Entity Report Annexure A(1) by Urban Dynamics (2010).

Reference 2: The Department of Rural Development and Land Reform



On behalf of Ward 2 Forum