

# RESEARCH Report 35

## Covie Community Land Claim

*Karin Kleinbooi and Edward Lahiff*



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## Covie Community Land Claim.

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# Acronyms

CCC	Covie Claimants Committee
CPA	Communal Property Association
CRLR	Commission on Restitution of Land Rights
DLA	Department of Land Affairs
LRC	Legal Resources Centre
MOU	Memorandum of Understanding
NGO	Non-governmental Organisation
RLCC	Regional Land Claims Commission
SCLC	Southern Cape Land Committee
SPI	Social Process Initiative
TOR	Terms of Reference

# 1. Introduction

The Covie community restitution claim refers to a claim by past and present residents of Covie village, situated within the Tsitsikamma National Park, between Plettenberg Bay and Port Elizabeth in the Western Cape province. The claim relates to the forcible dispossession of this largely coloured community of their residential plots, arable allotments and commonage in the 1960s and 1970s.

Irene Barnardo, a descendant of one of the original inhabitants of Covie, lodged a restitution claim in 1996 on behalf of Covie people residing in the Knysna area. The claimants consist of the decedents of eight families that previously resided in Covie, 47 tenant families currently renting land there, and 28 other people living informally in Covie.<sup>1</sup> The claim includes 17 properties that were held in private title, as well as land known as the Covie commonage. The Covie Claimants Committee (CCC) was established with the initiation of the claim and this committee was mandated to represent the claimant community in the resolution of the claim. The claim, if resolved, will provide opportunities to a

number of groups including the claimant community with their historical connection to Covie and direct experience of dispossession and people with various connections to Covie and the broader Bitou community who live in the surrounding areas.

The Covie claim has not been legally settled to date, and while certain aspects of the claim have been agreed to, many outstanding issues remain to be resolved. The signing of a memorandum of understanding (MOU, Appendix 1) between the claimants, the Regional Land Claims Commission (RLCC), the local municipality, the Department of Water Affairs and Forestry and other stakeholders was a significant moment in negotiations to date. The MOU sets out the roles and responsibilities of all the various stakeholders during restoration and once the land has been fully restored. This report describes and analyses the claim and the settlement negotiations to date, and details the unique approach to settlement planning adopted in this case.

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<sup>1</sup> Draft presentation by Social Process Initiative (SPI), Cape Town, 20 October 2006.

## 2. Location and physical features of the land under claim

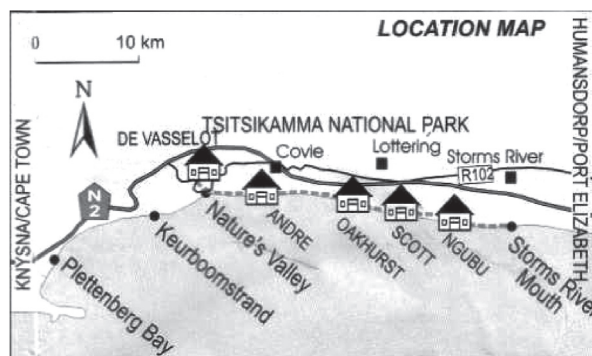
### Location of the land

Covie today is a small coloured rural community situated approximately 40 km outside Plettenberg Bay off the N2 national road towards Port Elizabeth. Covie forms part of the Garden Route, and part of the Tsitsikamma National Park's Otter Trail crosses through the settlement. It falls within the jurisdiction of the Eden District Municipality and Bitou Local Municipality, in the Western Cape (see Map 1). A gravel road off the R102, approximately three kilometres after the Groot River Pass, is the only access in and out of Covie. Limited land-based economic activities are currently under way. The inhabitants are however mostly dependent on wage work and government grants to sustain their livelihoods. Little development has taken place since the settlement was first established in 1883, and none since it was proclaimed a coloured group area in 1978.

### Description of the claim

The land under claim consists of two main types: residential allotments and commonage. The residential plots have small dilapidated wooden houses (some occupied, others abandoned), some with overgrown garden allotments. There is a large tract of overgrown commonage where a small number of pigs and cattle are grazed, part of which has been declared a protected forest. This denies the

Map 1. Location of Covie



Source: De Satge, R. 2005. *Covie Case Study Profile D1*, DLA Training.

community access to the sea and has impeded traditional subsistence fishing activities.

In the greater Nature's Valley area, land use has been almost entirely commercialised and competing land uses range from commercial industry (brick making) and commercial diary farming to popular tourist farms.<sup>2</sup> In relation to the rest of the area, Covie has remained relatively untouched.

Today Covie is a small settlement of less than 200 inhabitants that forms part of the biggest nature reserve in the Nature's Valley area, the Tsitsikamma National Park, which stretches 65 km along the coast from Nature's Valley to Oubosstrand. The area is rich in indigenous forests with vegetation-clad mountain ranges and a high biological diversity.<sup>3</sup>

### Commonage

The first portion of land under claim was commonly known as the Covie commonage (officially called Farm No. 287), which was historically used by Covie residents for grazing their livestock. The commonage stretches to the high-water mark on the shore and formerly gave residents of Covie access to the sea for fishing. This land, of approximately 733 ha in extent, is unsurveyed and unfenced and is registered as unalienated state land.<sup>4</sup> A portion of 140 ha of the commonage land facing the sea was proclaimed protected land in 1974 (in terms of Proclamation 324 of 1964 and Proclamation 61 of 1974 of the National Parks Act of 1926) and is now incorporated into the Tsitsikamma National Park under the management of SANParks, on behalf of the Department of Water Affairs and Forestry.

### Arable allotments

Thirty arable allotments, originally known as farms 257 and 286, were allocated to various white and coloured families in the 1880s. These allotments were used in part for residency and a section of the allotments were used as vegetable gardens. At the time of dispossession (1964–1974, see Chapter 3), 17 white-owned allotments were expropriated, with compensation, while eight coloured and five white owners held on to their title deeds. Thus, eight even are

<sup>2</sup> Personal communication with Mornay du Plessis, Bitou Local Municipality, 16 August 2006.

<sup>3</sup> <http://www.unep-wcmc.org/sites/pa/0679p.htm>

<sup>4</sup> *Mandate to negotiate in terms of the Restitution of Land Rights Act 22 of 1994, as amended. In the matter of Covie community claim.* Undated document. RLCC: George.



still registered in the names of the descendants of the coloured families and these owners are currently residing in Covie. These eight allotments do not form part of the claim, although their owners form part of the claimant community as they lost access to commonage and other resources. Five allotments were not affected by the proclamation of Covie as a coloured group area because they were (and still are) owned by white people. These allotments are erven 261 (Barnardo), 262 (Burger), 267 (Wyatt) 271 (Victor) and 277 (Barnardo). These five erven are not occupied by their owners. The rest of the Covie residents who historically lived on unsurveyed land in the community were classified as squatters and did not qualify for formal rights of access to the old commonage.

Sixteen residential allotments, of approximately 32 ha in total, are currently registered to the national Department of Housing. The remaining demarcated allotment belongs to the Anglican Church, and accommodates the church building. The total land under claim thus amounts to 17 allotments and the commonage, bringing the total land under claim to approximately 765 ha. The inclusion of the 17 erven in the claim is based on the application of racially discriminatory legislation when Covie was declared a coloured group area in terms of the Group Areas Act 3 of 1969, which divided the community along racial lines. The removal of whites contributed to the decline in municipal services and infrastructure in the community. The community members are now requesting transfer of these allotments to them on the basis that racial laws prevented them taking up ownership of those allotments after expropriation from whites.

## Soils and climate

Covie lies on a plateau of Table Mountain sandstone, with soil that is acidic in nature and coarse in texture.<sup>5</sup> These soils are not always suitable for agriculture and are usually left under natural vegetation (fynbos) or used for coniferous forest plantations. However, because the soils are sandy in places, they are suitable for vegetable production, especially root crops. The area between George and Tsitsikamma (the Garden Route) receives rain throughout the year, varying between 250 mm and 3,000 mm per year. The wettest months are May and October and the driest June and July.<sup>6</sup>



## Services

The settlement of Covie has not been developed further since the last white residents left the area during the declaration of Covie as a coloured group area in September 1978. Nearly all basic services such as road repairs, housing development and maintenance of firebreaks were discontinued by the forestry department that controlled the area. There are no hospitals, clinics, fire stations and schools, and prepaid electricity is only now being installed. No sanitation is available and residents are currently using pit latrines. Garbage removal is done on an irregular basis by the Bitou Local Municipality. The residential allotments are serviced with piped water and families use buckets to fetch water for domestic use. The water is supplied by the Tsitsikamma National Park from a reservoir in the mountains and is provided to residents free of charge.

Access to Covie is via a single road that curves in and out of the settlement. Only one house is serviced with a telephone line. The nearest primary school is situated 40 km away, in the town of Craggs on the way to Plettenberg Bay. Only one vehicle is available in the community and is often used in medical emergencies because no public transport service is available. Shopping facilities are accessed in Plettenberg Bay. A mobile clinic provides a limited service to the community but general health and the administration of medication is handled by the midwife in the community, one of the oldest residents who also played a role in the submission of the claim.

<sup>5</sup> <http://www.unep-wcmc.org/sites/pa/0654p.htm>

<sup>6</sup> Fey, M. 2005. *The soils of South Africa*. Stellenbosch: Stellenbosch University.

### 3. History of ownership and dispossession

The present-day Covie does not reflect the multiracial settlement that was established in 1883. Racial classification and segregation as well as environmental restrictions under the apartheid regime brought dispossession and neglect to Covie and shaped it into what it is today – a small poverty-stricken community.

The community of Covie descends from white and coloured registered woodcutters who worked the belt of indigenous forest between George and Humansdorp in the early 19th century and lived in the forests where they worked.<sup>7</sup> These woodcutters were said to live in poverty and eked out a meagre existence based on woodcutting and fishing. As an extra supplement, a number of men took up fishing and cultivation on pieces of land in the areas surrounding the forest. In 1883, as a result of a growing population, the settlement of Covie was established on a more formal footing in terms of a deed of grant.<sup>8</sup> Thirty woodcutters were granted residential allotments of 58.3 ha in total by the Cape Colonial government on a perpetual quitrent of 10 shillings per year. While some woodcutters successfully applied for land, others were rejected on the basis that they were farm servants and not woodcutters who were officially registered and therefore could not benefit from land allocations.<sup>9</sup> Under the quitrent arrangement, the woodcutters each had the right to an allotment and could use the Covie commonage, measuring just over 790 morgen, which was demarcated as communal grazing grounds for the oxen used by the woodcutters to drag timber from the woods, and in addition served as a supplement to the small amount of land allocated as allotments for each of the families. A settled community was thus formed.<sup>10</sup>

The land in Covie was granted to those woodcutters residing in the location who were able to pay quitrent, without racial

consideration. It is said that 10 erven were registered to coloured families, while 20 erven were registered to the white woodcutters. These white and coloured families resided alongside each other, and it is said that their shared poverty helped shape mutual dependence.<sup>11</sup> Aunt Irene Barnardo recalls her father describing the community as ‘one group of people who all worked hard for their wages and who supported each other in times of need. The community wasn’t divided by colour.’<sup>12</sup>

The community of Covie thus became a community of landowners with user rights to the commonage for grazing which was registered against each woodcutter who was granted title deeds. The understanding among Covie residents was that ‘each user had the right to 1/30th share (or 28 morgen each) of the commonage.’<sup>13</sup> With the granting of land, the livelihoods of the woodcutter families located in Covie appeared to be more secure.

*In those days, despite poverty our families lived well together, and while men were at work, women and children tended to the crops and the livestock. When meat was scarce we were able to put fish on the table.*<sup>14</sup>

However, while many families managed to secure their tenure and were able to eke out a living, other realities started impacting on the woodcutters’ livelihoods.<sup>15</sup> As a result of over-exploitation, the forest resources were depleted and the early 1930s saw the introduction of new environmental legislation by the Department of Forestry declaring that parts of the indigenous forests were closed off from utilisation for a period of 200 years. Commercial forests were planted in denuded areas and forestry employment continued in different areas.<sup>16</sup>

<sup>7</sup> Delius, Peter. 2002. Caught in a crossfire: A history of Covie, 1883–2002. *South African Historical Journal*, 47; Schulz, Kathleen. Undated. *Knysna and Tsitsikamma forest. Transcript 1*. Unpublished document. George: Southern Cape Land Committee.

<sup>8</sup> Office of the RLCC. Undated. *Terms of reference for the Covie Development Plan*. George: RLCC.

<sup>9</sup> Delius, Peter. 2002. Caught in a crossfire: A history of Covie, 1883–2002. *South African Historical Journal*, 47.

<sup>10</sup> Personal communication with Philip and Josephine Dickson, Covie, 18 August 2006.

<sup>11</sup> Personal communication with Irene Barnardo, Covie, 17 August 2006.

<sup>12</sup> Personal communication with Irene Barnardo, Covie, 17 August 2006.

<sup>13</sup> Schulz, Kathleen. Undated. *Knysna and Tsitsikamma forest. Transcript 1*. Unpublished document. George: Southern Cape Land Committee. Various unpublished documents, George: RLCC; *Lessons from the Covie community*. Undated report. George: Southern Cape Land Committee.

<sup>14</sup> Personal communication with Andrew Roman, Plettenberg Bay, 17 August 2006.

<sup>15</sup> Delius, Peter. 2002. Caught in a crossfire: A history of Covie, 1883–2002. *South African Historical Journal*, 47.

<sup>16</sup> *Knysna and Tsitsikamma forests*. Undated. Unpublished report and transcripts. George: RLCC; Personal communication with Irene Barnardo, Covie, 17 August 2006.

This was followed by the introduction of the Department of Forestry's white labour policy in 1934. This was one of the most significant points in the history of Covie that affected the coloured woodcutters the most, as less employment was now available to them. While work in the commercial forest plantations remained an important source of employment, the residents of Covie gradually shifted their livelihoods to agriculture and fishing to supplement their declining woodcutting income. It also marked the beginning of what Delius<sup>17</sup> calls the slow 'strangulation' of Covie by the Department of Forestry.

Between 1964–1974, white and coloured landowners of Covie were ordered to relinquish their rights to the commonage because the Department of Forestry wanted to plant pines and expand the forest on the land. In 1964, with the Department of Forestry's Proclamation 324, Portion 1 of the Covie commonage was declared protected forest on the basis that there was a shortage of land and a need to expand the declining forest. In 1974, Proclamation 61 granted an additional portion of the Covie commonage protected status and more grazing land was thus lost to the community. In subsequent years the Covie community was cut off from the coast when the National Parks Board fenced the whole expropriated area of 140 ha facing the seafront. Access to the sea was completely blocked off and the community lost the benefit of a fishing supplement to their livelihoods.<sup>18</sup>

The Covie community members were informed by letters that their rights to the commonage were to be expropriated as the land would be used to grow a new forest. Cheques to the value of R50 were issued to all the landowners who were affected by the dispossession of rights to the commonage, including the already dispossessed white owners who had earlier received compensation for the dispossession of title deeds of their allotments. All grazing rights were terminated and livestock owners were instructed to dispose of their stock. A group who refused to give up their grazing rights sought legal assistance to contest the dispossession of grazing rights but to no avail.<sup>19</sup> The majority of coloured people (including many so-called 'squatters') moved under pressure from the Department of Forestry which threatened to terminate their employment, but those who stayed did not accept the compensation of R50 offered for the loss of

grazing rights to the commonage.<sup>20</sup> In 1971–1972, three of the original coloured owners, under pressure to move to the designated forest stations, transferred their allotments (erven 261, 262 and 277) to white people.

By about 1970 all fishing activities in Covie had come to an end. By the late 1970s most of the woods and trees had been removed from the forest, and many coloured woodcutters were forced to find work in other areas of Knysna as parts of the forests were closed off to allow the trees to recover. Further pressure was then exerted on the people employed by the Department of Forestry. They were threatened with losing their employment and facing criminal prosecution if they did not relocate to Coldstream (approximately 15 km from Covie). In 1976, 17 coloured woodcutters and their families were moved to the Coldstream forest station on the eastern side of the Blaauwkrantz River.<sup>21</sup> The threats by the Department of Forestry to relocate people to the Craggs, a settlement outside Plettenberg Bay which was supposedly built to accommodate remaining Covie residents, continued. The remaining woodcutters lost their employment with the Department of Forestry and under this pressure more families left Covie in search of a livelihood elsewhere. The population of Covie was significantly reduced by these forced removals.

Those white residents who stayed behind were advised by the Department of Forestry that they could remain in Covie until a new housing settlement, called Lottering, had been built to accommodate them and other white woodcutters and their families from Coldstream Forestry Station.

The coloured families who remained at Covie, fearing forced removals which had begun in other forestry settlements, requested the government to declare Covie a coloured settlement. On 29 of September 1978 the government granted this request and Covie was declared a coloured group area by Proclamation 242/1978 under the Group Areas Act 3 of 1966. At the end of 1979, when Lottering was completed, the white woodcutters were moved with the assistance of the police, health inspectors and officials of the Department of Forestry.

Four of the original white families retained their ownership rights but moved out of Covie when expropriation orders

<sup>17</sup> Delius, Peter. 2002. Caught in a crossfire: A history of Covie, 1883–2002. *South African Historical Journal*, 47.

<sup>18</sup> *Summary of Covie claim*. Undated report. George: RLCC.

<sup>19</sup> Personal communication with Irene Barnardo, Covie, 17 August 2006; Personal communication with Philip and Josephine Dickson, Covie, 18 August 2006; *Lessons from the Covie community*. Undated report. George: Southern Cape Land Committee.

<sup>20</sup> *Knysna and Tsitsikamma forests*. Undated. Unpublished report and transcripts. RLCC: George; Personal communication with Irene Barnardo, Covie, 17 August 2006.

<sup>21</sup> *Summary of Covie claim*. Undated report. George: RLCC.

were implemented for white owners between 1979 and 1982. Only 17 expropriation orders were granted, whereby use rights to the commonage were relinquished and the title deeds were deregistered. The 17 white owners received compensation accordingly.<sup>22</sup> With the declaration of Covie as a coloured group area the expropriated properties were taken over by the Community Development Board, and were later vested in the National Housing Board and thereafter in the Provincial Housing Board of the Western Cape. After the departure of whites from Covie, the state began renting some of the vacant erven to coloured people.

The effects of the removal on both those removed and those who remained in Covie were extreme. From 1978 all services that were rendered to Covie by the Department of Forestry were terminated, including road works, water delivery and firebreaks – all of which were crucial services for the community.<sup>23</sup> In the end just eight coloured households stayed in Covie, in poverty and with few employment opportunities. The restitution claim that was lodged by Mrs Irene Barnardo on behalf of the community in 1995 originated from these households.

The owners of allotments after the declaration of Covie as a coloured group area and the expropriation of most of the white owners are listed in Table 1.<sup>24</sup>

The individuals listed in Table 2, on page 7, were descendants of the original woodcutters, who, in 1883, were granted grazing rights against their title deeds. These title deeds were terminated between 1964 and 1974 following the proclamation of the commonage as a protected area.<sup>25</sup>

## Current land use

Land use in Covie is currently extremely limited, since the community's rights to graze were terminated by the Department of Forestry towards the end of the 1970s. The commonage today is infested with alien plants and fynbos. No pastures are left and virtually no agricultural activities are presently taking place. Patches of natural forest exists on the commonage and woodcutting continues for household use. A few owners have a few head of cattle grazing on the dense commonage, and a few plots have small vegetable gardens and pigs, chickens and ducks. The medicinal fynbos on the commonage is still harvested as necessary.<sup>26</sup>

**Table 1. Allotments after the declaration of Covie as a coloured group area**

Erf	Owner
257	National Housing Board
258	National Housing Board
259	National Housing Board
260	National Housing Board
261	Andrew Barnardo: White owner
262	Schalk Willem Burger: White owner
263	Anglican Church
264	National Housing Board
265	National Housing Board
266	National Housing Board
267	Archibald Arthur Wyatt: White owner
268	National Housing Board
269	National Housing Board
270	National Housing Board
271	Thomas Victor: White owner
272	Elizabeth Irene Barnardo: Coloured owner
273	National Housing Board
274	Jean Davids: Coloured owner
275	National Housing Board
276	National Housing Board
277	Claudius Barnardo: White owner
278	Hendrik Pedro: Coloured owner
279	Isaak Boesak: Coloured owner
280	John Dixon: Coloured owner
281	Danny Stander: Coloured (informal transaction)
282	Petrus Christian: Coloured owner
283	National Housing Board
284	Magdalena M Pedro: Coloured owner
285	National Housing Board
286	National Housing Board

Source: *Covie Summary Report*. Addendum to the Covie Land Claim. RLCC: George.

<sup>22</sup> Compensation ranged between R1,500 and R4,690, with the exception of R16,390 paid for Lot 269 of Mr Samuel John Roberts; *Knysna and Tsitsikamma forests*. Transcript 10. Undated. Unpublished report and transcripts. George: RLCC.

<sup>23</sup> Personal communication with Mornay du Plessis, Bitou Local Municipality, 16 August 2006.

<sup>24</sup> One formerly coloured-owned plot was sold to Mr A Wyatt in 1996, bringing the total number of white owners in Covie to five.

<sup>25</sup> *Knysna and Tsitsikamma forests*. Undated. Unpublished report and transcripts. George: RLCC.

**Table 2. Title deeds terminated following the proclamation of the commonage as a protected area**

Erf	Landholder	Extent
261	A. Barnardo	1.7741 ha
271	T. Victor	1.9201 ha
272	F. Barnardo	2.1295 ha
274	J. Barnardo	2.0486 ha
278	H. Pedro	1.9260 ha
279	I. Boesak	2.1924 ha
280	J. Dixon	1.8711 ha
281	T. Peterson	1.9979 ha
282	P. Christian	1.9069 ha
284	M. Pedro	1.9398 ha

Source: *Memorandum*. The Covie Land Claim, District Knysna, Western Cape Province. RLCC: George.

Residents still make use of the forest for firewood. Most of the allotments were fenced in the past but, except for the well-fenced property of Mr Wyatt, none of the properties has clear demarcations. Some allotments are unfenced, while on others the fencing is in poor repair.<sup>27</sup>

In 2004, a community garden was started on erf 272 where vegetables (potatoes, cabbage, carrots, sweet potatoes, pumpkins and squashes) were grown. It was partially fenced with the support of the Bitou Local Municipality but crop production has since been discontinued due to wild pigs in the surrounding areas eating vegetables and also partially due to the lack of labour in the community.<sup>28</sup> Fishing has never resumed after the proclamation of 1974. Today fishing is still of subsistence value to the community but access to the sea is elsewhere, outside Covie.



<sup>26</sup> Personal communication with Irene Barnardo, Covie, 17 August 2006; Personal communication with Philip and Josephine Dickson, Covie, 18 August 2006.

<sup>27</sup> Personal observation, Covie visit, 15–17 August 2006; De Satge, R. 2005. *Covie Case Study Profile D1*. DLA Training. August.

<sup>28</sup> Personal communication with Irene Barnardo, Covie, 17 August 2006.

## 4. The restitution process

The approach used in the settlement of the Covie community claim has been quite different to other restitution claims in the country. Whereas the standard approach is to complete the Settlement Agreement before detailed planning is undertaken, at Covie the settlement was approached in a phased manner that addressed much of the detail of the settlement in advance of the signing of the Settlement Agreement. Most importantly, key stakeholders entered into an agency agreement that binds all the relevant statutory bodies into the restitution process.

After the community claim was lodged on behalf of the eight coloured families that were originally affected by the termination of the grazing rights to the commonage, an interim CCC, of 11 representatives, all direct descendants of the eight original coloured owners, was elected by the community to represent them in the restitution process.

The office of the RLCC, in George, wanted to settle the claim when the validity of the claim was accepted in March 2004, and motivated for a public signing of the Section 42D agreement before verification of members or institutional arrangements had been completed. The Covie community (as part of the Southern Cape Regional Forum) were well informed about other restitution claims in the area (i.e. Dys-seldorp) that resulted in conflict arising from hasty settlements and which did not deliver on the expectations of claimants. The CCC therefore opposed the signing of the Section 42D or any transfer of land until such time as a development plan with appropriate institutional arrangements and the necessary implementation funds and skills were in place.

The gradualist approach to settlement was spelled out by the Deputy Minister of Agriculture and Land Affairs in a ceremony to mark the first stage of settlement:<sup>29</sup>

*The approach at Covie has not been to rush through a preliminary settlement just because the Government want to show that it is doing something.*

*Our approach here is a cautious one. We are settling:*

- *the fact that we accept the claim;*
- *the extent and situation of land to be transferred; and*
- *the amount that the claim is worth.*

*The settlement of these three things will provide the foundation of rock for the conclusion of the final settlement agreement. Our agreement of today therefore provides the framework for the drawing of a plan to rebuild Covie. We are not going to transfer the land to a Community Property Association and wish them good riddance. In terms of the agreement, we will undertake a planning process that will determine who gets what, subject to clear and enforceable terms and conditions. It is only once the process has been completed and that we are satisfied that the development plan can work, that we will agree to the transfer of the land and the provision of development assistance.*

*The planning process needs to determine:*

- *the location and extent of land for residential settlement, the level of services and route for township establishment and the process and criteria for allocation, and actual allocation;*
- *the extent of land that requires special title deed conditions to ensure conservation and the type of conditions;*
- *the extent and situation of land for ventures and the feasibility of such ventures.*

*Final settlement can only be concluded, once these issues are determined, but these issues can only be determined on the basis of certainty concerning the extent of land and developmental assistance. That is why we are concluding this preliminary agreement today. It would be reckless of us to agree to transfer the land before the following issues have been determined. If we do not do this upfront, occupation will happen on a 'self-help' basis, valuable assets will simply go to wrack and ruin and opportunities for development will be squandered.*

Addressing the settlement process in this way provided important opportunities for the community to participate in, and shape, the developmental process, and, together with official agencies, to implement proposed developments in a gradual and flexible manner.

### **Covie memorandum of understanding**

With the insistence of the community, supported by the Southern Cape Land Committee (SCLC), a steering

<sup>29</sup> Speech made by the Deputy Minister of Agriculture and Land Affairs during the signing of the Covie Framework Agreement, 22 March 2004, Covie.

committee was formed of various government institutions, facilitated and managed by the George office of the RLCC. On 22 March 2004, at a public ceremony, the various stakeholders, including the Department of Land Affairs (DLA), Commission on the Restitution of Land Rights (CRLR), Bitou Local Municipality, Department of Housing (as landowners, and in support of the future development of the township section of Covie), the Department of Public Works (as the commonage landowners), Department of Water Affairs and Forestry (as custodians of the land lost to the national park), Department of Environmental Affairs and Tourism (responsible for management of the national park) and Covie claimants signed an MOU.

The objective of this MOU (see Appendix 1) mandates all the parties '... to constitute a framework in terms of which the development will take place and for the final settlement of the claim in terms of Section 42D of the [Restitution] Act, binding all signatories into a process of planning, including resource commitments, before the finalisation of the Section 42D settlement agreement or the transfer of land to the community.' The MOU and the composition of the steering committee serves as a transitional arrangement until ... the final decision on the future uses and the development of the restored land will be negotiated and agreed between the parties to the MOU'.

The signing of the MOU was a key stage in the Covie land claim and committed state institutions to providing both services and financial resources to the Covie community as part of the settlement of their claim. The commitment from the various institutional role players was to be combined in what would later be called the Covie Development Plan, which was to be prepared in consultation with the CCC and the Covie steering committee based on the mandates of each of the signatories, and which forms the basis for the settlement of the claim in terms of Section 42D of the Restitution Act.

The MOU stipulates the commitment of each of the above role players in the Covie restitution claim, which includes the obligations listed below.

#### **Commission on Restitution of Land Rights**

The agreement from the CRLR was to determine the market price of the land and to make available a settlement grant to the monetary value of the claim in terms of Section 42D

of the Act for the purpose of restoration. The valuation of the claim was calculated at R9,574,168.

The MOU also committed the CRLR to reaching a full and final agreement with the claimants, that would confirm the rights in land to be restored, the value of monetary compensation and any conditions that might be necessary.<sup>30</sup>

*6.1 The Commission shall through negotiations with the Covie Committee, formulate the terms of the Claimant Settlement Agreement to be concluded between the State and the Claimants, which agreement will fully and finally settle this claim for the purposes of restoration and development in accordance with the recommendations of the Development Plan.*

It was also agreed that the CRLR would provide a Restitution Discretionary Grant of R3,000 per household within the claimant community and a Settlement Planning Grant of R1,440 in respect of each household, to provide for the planning and development assistance.

#### **Bitou Local Municipality**

The Bitou Local Municipality, agreed to establish infrastructure and services and take responsibility for the management of the commonage in Covie if it gained the approval of the community.

#### **Provincial Department of Housing**

The Department of Housing agreed to the restoration of 16 residential properties of a total of 32 ha to the community through transfer and individual title registration at a cost of R5,000 per property. The department furthermore undertook to build additional housing through the Social Housing Foundation and to make institutional housing subsidies of R5,700 available to households within the claimant community.

#### **Department of Water Affairs and Forestry**

The Department of Water Affairs and Forestry agreed to 'enter into a partnership with the community to facilitate the management of the registered state land in Covie'. In addition, it undertook to 'explore possible development ventures and eco-tourism within the parameters of the applicable legislation'.

<sup>30</sup> Sections 6.1, Memorandum of understanding between the Department of Land Affairs, the Commission on Restitution of Land Rights, the Bitou Local Municipality, the provincial Department of Housing, the Department of Public Works, the Covie Claimants Committee, the Department of Water Affairs and Forestry and the Department of Environmental Affairs and Tourism, 2004.

### **Department of Public Works**

In agreement with the MOU, the Department of Public Works undertook to restore the remainder of the unregistered and unsurveyed farm 287, commonly known as the commonage, of approximately 683 ha in extent, which falls outside of the Tsitsikamma National Park. It furthermore agreed to grant the claimants suitable state land which has now been identified by both the department and the CRLR as compensation for the approximately 150 ha in extent that was incorporated into the Tsitsikamma National Park.

### **Department of Environmental Affairs and Tourism**

The department undertook to facilitate eco-tourism development and make provisions for restoration of the community's access to the sea at Nature's Valley through the national park.

### **Department of Land Affairs**

It was also agreed that the DLA would appoint an appropriate service provider with relevant development experience to prepare the community development, business and asset management plan, with a budget (i.e. a development plan).<sup>31</sup>

*5.1 The service provider will compile the plan and budget in accordance with the directives and principles contained in this agreement, with particular reference to clause 4.1.2, after consultation with and on the basis of developmental principles determined by the interim steering committee.*

*5.2 The plan must provide for the development of the restored portions of Subject Land, alternative State Land, Community*

*Land in a sustainable, affordable and integrated manner taking into account the development needs of the previously disadvantaged surrounding communities. It must provide for and ensure that the subject land and other assets are managed in a sustainable manner.*

### **Additional provisions**

The MOU also set up an interim steering committee, made up of representatives of all the signatories, which was tasked with the implementation of the memorandum within the time frames and subject to the conditions set out in the MOU, in order to enable the parties to enter into a Settlement Agreement in terms of Section 42D of the Act.

It was further agreed that any development of the restored land should take place in terms of the proposed development plan, which would also determine the most appropriate legal entity for the community.<sup>32</sup>

*9.2 The Development Plan will determine the most appropriate legal entity/ies that will take transfer of and manage the land.*

Finally, the MOU prioritised the provision of infrastructure for township development at Covie.<sup>33</sup>

*9.3 The parties agree that the Department of Housing shall prioritise the provision of necessary funding – on application by the municipality – for the provision of bulk services and internal reticulation to the development and to the approval of the Director of the Department of Housing.*

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<sup>31</sup> Sections 5.1 and 5.2, Memorandum of understanding between the Department of Land Affairs, the Commission on Restitution of Land Rights, the Bitou Local Municipality, the provincial Department of Housing, the Department of Public Works, the Covie Claimants Committee, the Department of Water Affairs and Forestry and the Department of Environmental Affairs and Tourism, 2004.

<sup>32</sup> Section 9.2, Memorandum of understanding between the Department of Land Affairs, the Commission on Restitution of Land Rights, the Bitou Local Municipality, the provincial Department of Housing, the Department of Public Works, the Covie Claimants Committee, the Department of Water Affairs and Forestry and the Department of Environmental Affairs and Tourism, 2004.

<sup>33</sup> Section 9.3, Memorandum of understanding between the Department of Land Affairs, the Commission on Restitution of Land Rights, the Bitou Local Municipality, the provincial Department of Housing, the Department of Public Works, the Covie Claimants Committee, the Department of Water Affairs and Forestry and the Department of Environmental Affairs and Tourism, 2004.



# 5. Membership and rights

## Membership

As the claim unfolded, the need for a verified list of members became necessary in order to establish who the potential beneficiaries were and what their rights would be in terms of the Settlement Agreement. It was envisaged that the list would include all current residents of Covie (including 'squatters'), direct descendants of those who owned land at Covie and those owners and tenants who moved out of Covie under the pressure of forced removals. The production of an agreed list has dragged on for a considerable period however, and there is still no definitive document identifying all the specific individuals and households who potentially should benefit as members of the Covie community.

A process to define membership was embarked on by the community with the SCLC and the Legal Resources Centre (LRC), which was further built upon by the appointed development consultants (Social Process Initiative, or SPI) (see Appendix 2). Three broad categories of membership were first proposed, but a decision was then taken to broaden the definition of membership to include other eligible individuals who were no longer living in Covie but who had a historical link with the area. This brings the number of categories up to seven in total (A–G), as set out below.

Membership category A is defined as people who were directly dispossessed of their land rights including:

- the seven current coloured owners who lost their right to the commonage and one coloured person who bought land from one of the original claimants but in whose name the land has not yet been registered, plus the original owner of this erf who lost her rights of use to the commonage
- the tenants and occupiers who were dispossessed of occupancy and other use rights to the land
- the Anglican Church.

Category B is defined as people currently residing in Covie.

Category C consists of people who have a historical relationship with Covie and who used to live there but who left as a result of circumstances other than the impact of apartheid laws and practices.

Category D consists of the five white landowning families.

Category E consists of the direct descendants of people in categories A and B.<sup>34</sup>

In order to ensure that the settlement meets the development needs of the area and facilitates a sustainable settlement in Covie, two other categories of people may apply for membership. Thus, category F includes people who, on the basis of their capacity and readiness, are able to make some contribution to the Covie community and its members. The last membership category (G) consists of other previously disadvantaged people from the surrounding communities who wish to live in Covie and contribute to the development of the area.

The general classification of membership has been developed with assistance from SCLC and LRC. It remains the responsibility of the committee to develop and maintain a membership register that reflects the names and details of the specific people in the different categories, and each member will be issued with a membership certificate. According to the interim constitution, membership cannot be transferred and can only be terminated at the time of death or in case the member resigns. The CCC has the powers to add additional requirements for membership or make amendments to the interim constitution at an annual general meeting or as agreed to by a community meeting where a quorum exists.

## Rights and benefits

From the above classification two broad classes of members were identified that would benefit from the settlement of the claim. So-called primary members were classified as categories A–C who, in terms of the proposed Settlement Agreement, would directly benefit by having plots restored to them and developed, and new ones allocated where necessary. These are the people who will take up occupancy and use of the land.

This group consists of:

- 8 coloured landowners
- 47 individual households with formal rental (± 250 'beneficiaries')
- 28 households with informal tenure (± 140 'beneficiaries').

<sup>34</sup> Covie interim constitution. Draft 6. March 2005.

So-called secondary members include other erf owners who have abandoned plots (categories D and E). The category consists of an estimated 2,500 decedents of the eight original families, who themselves never actually resided in Covie. In terms of the proposed development plan, this group would be able to apply for land and return to work and live in Covie should they desire to do so. People falling into category G constitute poor people in the surrounding areas who do not have any historical link with the settlement but who would be eligible to apply for work and land in Covie in order to establish a livelihood and to contribute to the development vision of Covie.

Category F, the Friends of Covie, conservation and environmental groups, development practitioners and the like, will not be able to gain direct benefits from the restitution claim, but will rather act as a source of assistance to the community.<sup>35</sup>

The absence of any verified list of the community members remains a major problem. While membership is determined by the constitution, largely in terms of direct and indirect descent from the original group of eight owners at Covie, the nature and content of the rights of members and the subsequent allocation of rights to land access (for primary members) and rights to benefit (for secondary members) have become blurred. For example, primary members may choose other family members who they view as 'in need' to come and take up a part of the land allocated to them.

This has led to a number of differences between the various parties and the development consultants. According to the consultants (SPI), membership should be determined through family lineage and can include three generations of decedents, or whatever a particular family may decide. According to this formula, membership will be defined in terms of the historical relationship to the land, with the actual choice of individual who would benefit being decided within particular families. This has implications for the way in which rights are allocated. The concerns raised by SCLC and LRC lie specifically in this type of determination and allocation of rights. According to them, this definition of membership is loose, and rights are thus likely to be unenforceable, leading to insecurity and inequitable access to the benefits of Covie. They are of the opinion that it is only once rights have been defined that one can determine what the best options for vesting of ownership may be. They motivate for proper determination of membership and a

clearly spelt out agreement on how different types of rights vest and are administered, enforced and transacted. This requires close engagement with the terms and conditions for different land uses (grazing, allotments, residential, etc.). The RLCC's management committee has subsequently decided that the process of determining the members of the Covie claim will be carried out by the commission itself to ensure that all members are clearly and rightfully identified. This is potentially problematic as, in law, only the community itself can define and identify its members, and it is not clear what criteria the RLCC will use in verifying membership.

While debate continues around membership and the rights of members, other community expectations are surfacing. For example, there are expectations of benefits among those members who are not currently living in Covie that they will be able to go and live at Covie when they reach retirement age. The concern here is that people may want to jump on the bandwagon when the development in Covie is in progress if no clear limits on membership, beneficiaries and allocated rights are set and agreed upon in advance. A number of people outside Covie, however, say they are unlikely to return to Covie given that they already have homes and jobs and established livelihoods elsewhere.<sup>36</sup>

To date, SPI has experienced difficulties in developing the rules and defining the rights that will guide use and ownership of land and assets. The design of an appropriate institutional arrangement (legal entity) has also proved highly contentious. After a lengthy consultation process, SPI presented a number of alternative options for the choice of legal entity that would take ownership of the land and oversee the development process and distribution of benefits.

After a lengthy process of working with the community to explore the implications of the different entity options, SPI recommended that the community establishes a Trust (to be called the Covie Development Trust) to ensure that the community assets and related economic opportunities are managed for the benefit of the community.

LRC has recommended a communal property association (CPA) and is of the opinion that a Trust holds certain risks that a community cannot always remedy on its own. They further indicate that a Trust would not be covered by the Communal Property Associations Act 28 of 1996 ('CPA Act'),

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<sup>35</sup> *Covie interim constitution*. Draft 6. March 2005.

<sup>36</sup> Personal communication with Pedro family, Knysna, 16 August 2006.

and the remedies available to a CPA are generally superior to those associated with a Trust. Furthermore, LRC and SCLC are of the opinion that where membership is not clearly identified or verified, and rights have not been allocated properly, the distribution of opportunities is likely to be inequitable.

This issue has not yet been resolved. SPI has recently proposed to the steering committee that SCLC and LRC facilitate further discussion around the institutional arrangement with the community until agreement has been reached and rights and membership are more clearly defined.



## 6. Proposed development plan

The preparation of the development plan required a lengthy process of consultation that involved the Covie claimant community and other stakeholders (see Appendix 3).

Detailed terms of reference (TOR) for the Covie Development Plan were drawn up, which set out the need for a development plan in accordance with the directives and principles contained in the memorandum of understanding.

*This plan, referred to as the Development Plan, will be prepared in consultation with the Covie Steering Committee that has been established to represent the interested parties. The Development Plan will form the basis for the settlement of the claim in terms of Section 42D of the Restitution of Land Rights Act 22 of 1994 (as amended) hereafter referred to as the Act, which in turn will determine the timeframe and budget for the implementation of the Development Plan.<sup>37</sup>*

The TOR included a set of principles that would guide the preparation of the development plan, as follows:<sup>38</sup>

*In compiling the Development Plan the Service Provider must:*

- a) Consider the vision [see Appendix 4] of the Covie community.*
- b) Work in consultation with the Steering Committee.*
- c) Work in a participatory manner with the Covie community, ensuring input, feedback and buy-in through:
  - (i) regular and correctly constituted community workshops to facilitate capacity building, decision-making and identification of skills requirements; and*
  - (ii) providing relevant information to enable the community to take informed decisions.**
- d) Provide for the development of the subject land in a sustainable, affordable and integrated manner taking into account the development needs of the previously disadvantaged surrounding communities, it being noted that this initiative is a 'community and land restoration' undertaking to undo the destructive*

*impact of apartheid laws and practices over many years.*

- e) Be guided by and be in keeping with the principles contained in the Act, in particular with reference to section 33(1)(e) and (f) and 35(3) and 42D(2) of the Act, by ensuring that:
  - (i) requirements of equity and justice are at all times taken into account;*
  - (ii) provision is made for the land and assets to be dealt with in a manner which is designed to protect and advance persons, or categories of persons, disadvantaged by unfair discrimination in order to promote the achievement of equality and redress the results of past racial discrimination.**
- f) All those deemed to be members of the Covie community as per the criteria set out in paragraph 5 of this document shall have access to the land or any compensation in question without prejudice or favour.*
- g) Be prepared to work in close conjunction with the 2 NGOs [non-governmental organisations] who support the claim, being the Southern Cape Land Committee (SCLC) who receives support on legal institutional issues from the Legal Resource Centre (LRC). A formal agreement has been entered into between the claimants and the two NGOs setting out the roles and responsibilities.*

The TOR also listed the various outcomes that were anticipated for the development plan, as follows:<sup>39</sup>

- The consultant must ensure that the completed Development Plan provides for the following:*
- a) Support the Covie community in making a decision around appropriate alternative state land in lieu of the commonage which has been incorporated into the Tsitsikamma National Park through undertaking feasibility studies of the options proposed by the National Dept of Public Works.*
  - b) Correctly identify the subject land including the alternative land in lieu of the commonage included in the Tsitsikamma National Park.*

<sup>37</sup> Section 2, Terms of reference for the Covie Development Plan, George: RLCC.

<sup>38</sup> Section 4, Terms of reference for the Covie Development Plan, George: RLCC.

<sup>39</sup> Section 6.1, Terms of reference for the Covie Development Plan, George: RLCC.

- c) Facilitate the surveying and transfer of the subject land where required.
- d) Determine the manner and form in which the awarded land will be developed – based on different budget linked scenarios:
- (i) only category A, B and C members who will take up occupancy and use of the land
  - (ii) additional potential and new members from previously disadvantaged communities who will add to the development vision of Covie;
  - (iii) the capacity of the land.
- e) Determine the terms and conditions, time frames, stages, costs and sources of funding and other resourcing for the development of the land.
- f) Determine plans to manage, invest and release the funds for the development in the most efficient and effective manner.
- g) In conjunction with the Legal Resources Centre, advisor to the claimants, develop the rules and rights that will guide use and ownership of land and assets.
- h) Finalise appropriate institutional arrangements including the constitution and agreements on an appropriate vehicle to implement the Development Plan.
- i) Ensure all prerequisite and statutory planning and development approvals and requirements have been met and authorisations received.
- j) Assist and facilitate the allocation of rights in terms of rules and, where necessary, the transfer of land.
- k) Take into consideration the rules outlined in the Interim Covie Association Constitution.

Detailed actions and outcomes for each of the above issues were set out in the TOR (see Appendix 5).

The community, after being presented with four alternative models by SPI, selected the Multi-tenure Land Use Model (see Table 3) as the preferred model.<sup>40</sup> This model accommodates all the current residents in Covie and those members who wish to return to Covie for permanent residency, as well as the development of the commonage and small and medium enterprises for economic development.

Each of the current family allotments (approximately 29 ha in total) will be sub-divided into plots of approximately 2,600m<sup>2</sup>, with the support of the Department of Housing. The intention is to accommodate up to six households of the same extended family on a single allotment. As noted in the tenure plan, an additional 32.7 ha of land will be

**Table 3. The Multi-tenure Land Use Model for Covie**

<b>Multi-tenure Land Use Model</b>		
<b>Land use</b>	<b>Area (hectares)</b>	<b>% of developable land</b>
Family allotments	29.19	20.10
Other residential	32.74	22.55
Economic opportunities	2.44	1.68
Community facilities	2.32	1.60
Crafts/business	3.12	2.15
Heritage	7.68	5.29
Central space	0.47	0.32
Sports/recreation	15.39	10.60
Communal agriculture	2.54	14.83
Livestock/grazing	15.74	10.84
Roads	14.32	9.86
Taxi stop	0.27	0.18

Source: SPI PowerPoint presentation to Covie Steering Committee, October 2006.

<sup>40</sup> The other options included a Greenfield Model (to wipe out all existing structures and to establish a new settlement) and a Consolidation Model (to service the sites and develop new plots across the road that divide the current allotments from the commonage, with agricultural zones identified between houses).



developed in order to provide a further 47 plots of the same size (2,600m<sup>2</sup>) for the 47 families currently renting houses at Covie and a further 28 plots for the informal dwellers. This amounts to 135 housing units which, according to SPI, correspond with the housing needs assessment completed with the approximately 2,500 descendants or possible members.

The development plan includes provisions for employment and profit-sharing opportunities in secondary wood processing, and employment opportunities in eco-tourism. It is also proposed to include a number of small and medium enterprises, which might not meet the employment needs of all residents but could create some paid employment. Such enterprises might include basket weaving, bed-and-breakfast accommodation, agriculture, a sand quarry, sea fishing, sustainable fynbos harvesting and development of the village as a 'living museum'.

Environmental sensitivities were an important constraint on the development proposals. It was proposed that the commonage will be managed and serviced by the municipality and that individuals will be allocated user rights upon application, but it is not yet clear if the municipality is willing to accept responsibility for the administration of the commonage or whether the community would prefer the legal entity to take charge of the commonage. The proposed alternative land for development to be provided by the Department of Water Affairs and Forestry was determined by considering the feasibility of the land,

but was limited by exclusion areas which are classified as environmentally sensitive (forest and some fynbos) or steep slopes. The identified alternative land, the plantation in Bloukrantz, is a category A forestry plantation (i.e. purely commercial species) with approximately 58 years of timber exploitation left. This land belongs to Cape Timber, a subsidiary of a company called Mountains to Oceans which is a joint venture between the state, SANParks and a private company.<sup>41</sup> The proposal is that the land will be transferred to Covie at no cost. It has also been suggested that the Department of Environmental Affairs and Tourism would pay the Covie community 10% of the revenue from the part of the Otter Trail that runs through their land.<sup>42</sup>

The contract with SPI expired in July 2006, at which point the development plan had not been completed, and so SPI was granted an extension until the end of February 2007. The concept development plan was presented at the 12th meeting of the steering committee on 27 August 2006. A further draft of the development plan was presented at the 13th meeting of the steering committee on 12 October 2006. The final Covie Development Plan is due to be presented to the steering committee at the end of March 2007.

Following final approval of the Covie Development Plan, the management committee in the George office of the RLCC will appoint an implementing agent, through a tendering process, to manage and implement the Covie Development Plan.

<sup>41</sup> On 1 November 2001 the SAFCOL Southern Cape and Western Cape plantations and sawmills were transferred to a new company, MTO Forestry (Pty) Ltd, with 100% of its shares held by SAFCOL. MTO currently manages 14 plantations between Cape Town and Port Elizabeth.

<sup>42</sup> Social Process Initiative (SPI) PowerPoint presentation to Covie Steering Committee, October 2006.

## 7. Lessons from Covie

The processes surrounding the settlement of the Covie claim provided an opportunity for building partnerships and positive working relationships between stakeholders, and the setting of a development agenda that is based on community needs. The settlement of the Covie community land claim has stretched over ten years and has yet to be finalised, but a number of valuable lessons have already been learned.

### **1. Covie has demonstrated the possibility, and the multiple advantages, of a phased approach, based on detailed planning and consultation prior to final settlement of the claim.**

The Covie land claim offers a valuable alternative approach to development planning in the context of land restoration under restitution. The outstanding feature of the settlement process to date has been a shift from handing land to communities without any development framework, and subsequently failing to meet community and individual needs, to a participatory planning process involving all relevant stakeholders, with a central role for community members themselves, leading to the commitment of resources even before land is transferred. It also greatly enhances the likelihood that, upon transfer, the land will be used in accordance with the principles agreed by the community, and will generate the benefits expected by them.

### **2. Close involvement and participation of the community in the planning and drafting of its own business and development plan.**

Working through various development options, with the assistance of trusted advisors, greatly assisted community members to understand their needs and the development potential of their area. The result is a development plan that is endorsed by community members and has all the required statutory planning and approvals in place. It has also ensured that the needs of the community are adequately communicated to official agencies, and that agencies are monitored to ensure compliance with their obligations.

### **3. The Covie land claim is backed by exceptionally strong financial and material support from all three spheres of government.**

The steering committee facilitated a sound relationship with key partners. It paved the way for close co-operation with a set of institutions that are known to it and with whom it has had the opportunity to build a relationship. The willingness of government and key partners to commit resources and

take responsibility for setting up a framework that will establish a sustainable restitution project helped shaped a strong relationship with stakeholders and potentially long-term strategic partners. With state departments tied into a memorandum of understanding, a basis for accountability and support to the community has been secured. This achievement placed the responsibility not only on the community alone but spread the risks across government spheres. All signatories to the MOU have undertaken to report on an annual basis their progress towards achieving their commitments to Covie, and for this they can be held accountable by the community.

### **4. The unity in the claimant community helped build an agreed vision and a clear constitution.**

The Covie claimant community is a strong unified group and shares a common vision of what will happen after land transfer. Every effort has been made to include all possible groups in decision making, thereby reducing the likelihood of disaffection or contestation later on. This vision has also helped curb unrealistic expectations, while the constitution provides a framework for accountability for each member and for the Covie leadership. This cohesion and participation is an outstanding value of this process.

### **5. Valuable skills were transferred, and valuable education took place as the process of restitution progressed.**

During the claim process the leadership of Covie developed capacity to lobby, negotiate, plan and manage the process in partnership with a range of government agencies on behalf of the claimant community. The RLCC, local government and other stakeholders have also been drawn into a process whereby they may come to fully understand the needs of the community and to explore various options in a mutually-supportive environment, thereby enhancing the likelihood of positive developmental outcomes.

### **6. The necessary support from NGOs with both social and legal expertise was provided throughout the development planning process.**

Strong support from the SCLC and the LRC, both with extensive experience with the design and implementation of land reform projects, provided valuable social and legal expertise and support which helped the community to make informed decisions during the planning process. Not only was this a benefit to the community, but also to the official agencies, many of which are less familiar with the restitution process.

In conclusion, it can be said that long-term and concrete support still needs to be provided to make Covie a sustainable land transfer that provides benefits to all its members. There is still the possibility of unforeseen circumstances that may arise later in the process, but the detailed planning that has taken place has laid the foundations for resolving issues as they arise. A review mechanism still has to be established to monitor the progress of implementation and development of Covie in order to make sure proposals and business plans come to fruition, and that the all stakeholders honour the commitments that they have made.

A few challenges remain. While state officials showed commitment to settling the claim and facilitating the planning process, it was largely left to the development consultants and supportive NGOs to shape and influence the Covie Development Plan. Ensuring adequate involvement by state agencies during the implementation of the development plan will be a critical factor in the years ahead. A further concern is the definitive identification of claimants and beneficiaries and the subsequent allocation of rights – matters that have been a subject of ongoing debate among the community, the contracting consultants and NGOs such as SCLC and LRC. The distinction between so-called ‘claimants’ and ‘members’, and between individual and community benefits and rights, are not as yet clarified and may have consequences for the enforceability of rights in future and the relationship between members.

Furthermore no agreement has yet been reached on the type of legal entity to be established to represent the Covie community. There appears to be considerable uncertainty about the implications of the different legal entity options among the Covie leadership, which reflects the differences in opinion among the advisors to the community and the consultants driving the development process. It was generally felt among the stakeholders that a decision on this needed to be reached before the end of 2006.

While there is broad agreement that the claim will be settled through the development option – that is, the re-establishment of a residential settlement with a mix of agricultural and small business activities – there remains a need to address the concerns of the community members (descendants) living outside Covie who do not wish to return. It is important to take note of needs expressed by people who do not wish to return to Covie but have expectations of some sort of compensation, such as cash compensation. This issue seems not to have been dealt with adequately to date.

Finally, while a solid basis appears to have been created for development at Covie, it is not clear how long the various state agencies will remain involved in the process. The ongoing role of such agencies, and how they might eventually disengage, should be addressed more explicitly in the development plan.



## 8. Key informants and contact details

<b>COVIE STEERING COMMITTEE MEMBERS AND CONTACT DETAILS</b>			
<b>Organisation</b>	<b>Name</b>	<b>Telephone</b>	<b>Email</b>
Covie Claimants Committee	Rosa-Linda Kock Irene Barnardo	044 874 6162 044 531 6679	linkock@telkomsa.net
Southern Cape Land Committee	Angela Conway	044 874 6162	angela_conway@telkomsa.net
Department of Housing	Hermien Hendric	044 8742160	Hhendricmagiba@pgwc.gov.za
South African National Parks	Madire Malepe	042 281 1607	Madirem@sanparks.org
Bitou Local Municipality	Mornay Du Plessis	044 531 6757	mornaydp@polka.co.za
Regional Land Claims Commission: Western Cape	Marius Langeveldt Esmerelda Reid Wilfred Noble	044 874 0021 044 874 0021 044 874 0021	MALangeveldt@dla.gov.za EOReid@dla.gov.za WJNoble@dla.gov.za
Knysna Municipality	Lauren Waring	044 3026300	knysna@knysna.gov.za

# Appendices

## Appendix 1: Memorandum of understanding

### MEMORANDUM OF UNDERSTANDING

Made, entered into and concluded by and between

#### THE DEPARTMENT OF LAND AFFAIRS

Herein represented by Adv Dirk du Toit in his capacity as Deputy Minister of Agriculture and Land Affairs, being duly authorised thereto (hereinafter referred to as "DLA")

#### AND

#### THE COMMISSION ON RESTITUTION OF LAND RIGHTS

Herein represented by Mr. Thozì Gwanya in his capacity as Chief Land Claims Commissioner, being duly authorised thereto (hereinafter referred to as "The Commission")

#### AND

#### THE BITOU LOCAL MUNICIPALITY

Herein represented by His Worship the Executive Mayor, Alderman Euan Vernon Wildeman, being duly authorised thereto (hereinafter referred to as the "Municipality")

#### AND

#### THE PROVINCIAL DEPARTMENT OF HOUSING

Herein represented by Ms. Nomatyala Hangana, member of the Executive Council responsible for housing in the Western Cape (alternatively, Western Cape MEC for Housing), being duly authorised thereto (hereinafter referred to as the "Department of Housing")

#### AND

#### THE DEPARTMENT OF PUBLIC WORKS

Herein represented by Ms. Stella Sigcau, in her capacity as Minister of Public Works, being duly authorised thereto (hereinafter referred to as the "Department of Public Works")

#### AND

#### THE COVIE CLAIMANTS COMMITTEE

Herein represented by Mr. John Pedro in his capacity as chairperson of the executive committee, being duly authorised thereto (hereinafter referred to as the "Covie Committee")

#### AND

#### THE DEPARTMENT OF WATER AFFAIRS AND FORESTRY

Herein represented by Ms. Buyelwa Sonjica, in her capacity as Minister of Water Affairs and Forestry, being duly authorised thereto (hereinafter referred to as "DWAF")

#### AND

#### THE DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND TOURISM

Herein represented by Mr. Marthinus Van Schalkwyk, in his capacity as Minister of Environmental Affairs and Tourism, being duly authorised thereto (hereinafter referred to as "DEAT")

## MEMORANDUM

### 1. DEFINITIONS

In this memorandum, unless the context clearly indicates otherwise:

- 1.1 Act means the Restitution of Land Rights Act, 1994 (Act No. 22 of 1994 as amended).
- 1.2 16 Allotments means Erven 257 to 286 situated at Covie within the Plettenberg Bay Municipality, Knysna District, Western Cape as reflected on the diagram attached hereto as Annexure "A".
- 1.3 Residential Land includes the 16 Allotments and such additional land as may be set aside for residential purposes.
- 1.4 Commonage remainder of farm 287 situated at Covie within the Plettenberg Bay Municipality, Knysna District, Western Cape as reflected on the diagram attached hereto as Annexure "A".
- 1.5 Alternative land means State land situated in the Knysna District or surrounds identified by the Department of Public Works and the Commission as suitable award to the claimants in lieu of the portion of land, approximately 150 hectares in extent, that was incorporated into the Tsitsikamma National Park.
- 1.6 Subject Land the Remainder of Farm Covie 287 known as the "commonage", alternative land and the "16 allotments".
- 1.7 Tsitsikamma National Park means Portion 1 of Farm Covie 287 situated within the Jurisdiction of the Plettenberg Bay Municipality, Knysna District, Western Cape as reflected on the diagram attached hereto as Annexure "A".
- 1.8 Claim refers to a claim in respect of a right in land that was lost by the Covie community.
- 1.9 Claimant means the Covie Land Claims Committee or legal entity yet to be established by and for the members of the Covie land claim.
- 1.10 Development means the development of the 16 Allotments, the Commonage and the Alternative land in terms of a Development Plan. The Development

will include a range of ventures and also township establishment and provision of services subject to the terms and conditions of this memorandum and particularly with regard to clause 4.1.2.

- 1.11 Development Plan means the community development and business and asset management plan and budget provided for in clause 5.
- 1.12 Managing Agent means the South African National Parks, "Sanparks".
- 1.13 Monetary value of claim means the total value of all lost land rights attached to this claim as calculated by the Commission in an amount of R9 574 168.70 (Nine million five hundred and seventy four thousand, one hundred and sixty eight rands and seventy cents).
- 1.14 Restoration shall include the development, allocation and transfer of the Subject Land in accordance with the provisions of the Development Plan for the benefit of the Covie Community.

## **2. INTRODUCTION**

- 2.1 The Act has been promulgated to provide for the restitution of rights in land to persons or communities dispossessed of such rights after 19 June 1913 as a result of past racially discriminatory laws or practices.
- 2.2 The Covie Committee has lodged a claim in terms of the Act for the 16 allotments, the commonage and the National Park (as defined above), arising from forced removals from properties previously occupied by them or their ancestors in Covie. The Regional Land Claims Commissioner for the Western Cape is satisfied that the claim lodged by the Covie community meets the requirements set out in section 2 of the Act and that the claimants are entitled to restoration (as defined above) as just and equitable award in settlement of their claim.
- 2.3 The Covie committee, chaired by Mr John Pedro (duly elected), has been mandated to represent the claimants in the resolution of the community's land claim.
- 2.4 It is the intention of the Covie Community to pool their resources (excluding Residential Land) for the purpose of acquiring and developing the restored land for the benefit of the Community. Residential Land that has already been allocated and such additional erven to be earmarked for residential purposes may, unless the Development Plan provides different arrangements, vest in ownership of individual community members.
- 4.5 The Memorandum of Understanding between the Department of Land Affairs, the Land Claims Commission, the Bitou Local Municipality, the

Department of Public Works, the Provincial Department of Housing and the Covie Claimants Committee as signed by their nominated representatives on 22 March 2004, is hereby withdrawn by agreement between the aforementioned parties, and is to be replaced by this Memorandum which incorporates the Department of Environmental Affairs and Department of Water Affairs and Forestry as additional parties to the Memorandum of Understanding.

## **3. OBJECTIVE OF THIS MEMORANDUM**

The objective of this memorandum is to constitute a framework in terms of which the development will take place and for the final settlement of the claim in terms of section 42D of the Act.

## **4. ROLES AND RESPONSIBILITIES OF PARTIES**

### **4.1. THE CLAIMANTS**

- 4.1.1. As compensation for the dispossession, the claimants accept restoration as defined above, subject to the monetary value of the claim.
- 4.1.2. The claimants undertake that any future development of the restored land will take place in accordance with applicable legislation and government policy and regulations as applicable before such restoration and will take into account the importance of conserving the natural environment in the region, subject to section 42C of the Act. The future use and development of the restored land will be negotiated and agreed between the parties to the MoU within the context of the Claimant Settlement Agreement referred to in clause 6 and in accordance with the recommendations of the Development Plan. Such agreement should not be unreasonably withheld by any party to this MoU.

### **4.2. THE COMMISSION**

- 4.2.1. The Commission undertakes to make available the monetary value of the claim on approval by the Minister of Agriculture and Land Affairs in terms of section 42D of the Act for purposes of restoration.
- 4.2.2. Should the cost of acquiring the Subject Land be less than the monetary value of the claim, the balance of the monetary value will be retained by the state for the account of the Community and be disbursed in accordance with the terms and recommendations of the Community Development Plan and in terms of a Funds Transfer and Distribution Agreement. Any interest on the retained amount will accrue to the capital amount for the benefit of the community.
- 4.2.3. Transfer duty will be waived in terms of Section 42(2) of the Act, by the Minister of Agriculture and

Land Affairs, on transfer of the land to the claimant community.

- 4.2.4. The Commission will pay for all transfer costs and other expenses incidental to the transfer of properties to the Covie community.

#### **4.3. DEPARTMENT OF HOUSING**

- 4.3.1. The Department of Housing has resolved to restore the 16 Allotments at a nominal cost of R5 000 per allotment.
- 4.3.2. The Department of Housing undertakes to transfer and register the 16 Allotments in accordance with the terms and recommendation of the Development Plan.
- 4.3.3. The transfers will take place in accordance with clauses 4.2.3 and 4.2.4 above and will be carried out by the State Attorney.

#### **4.4. BITOU LOCAL MUNICIPALITY**

The municipality or its managing agency undertakes, subject to the recommendations of the Development Plan, to do the following:

- 4.4.1 To facilitate the provision of housing, construction of roads, water reticulation and any other services that fall within its jurisdiction, to the development once the claim has been settled in terms of section 42D of the Act in accordance with the recommendations of the Development Plan.
- 4.4.2 To assist the claimants in investigating various eco-tourism ventures; all such ventures shall comply with the stipulations in clause 4.1.2 of the memorandum.
- 4.4.3 To allow and facilitate access to the sea over municipal land for the community.

#### **4.5 DEPARTMENT OF PUBLIC WORKS**

The Department of Public works undertakes, subject to the recommendations of the Development Plan, to do all that is necessary to ensure restoration and development (as defined above) in so far as it relates to the commonage and the alternative land, to the claimants including:

- 4.5.1 Assisting in the identification and acquisition of alternative State land for restoration, at no cost to the claimants.
- 4.5.2 To facilitate the release of the commonage and any identified alternative State land in terms of the State Land Disposal Act, 1961, by mandating the Director-General of Land Affairs to effect the eventual gratis transfer thereof to the legal entity to be formed by the claimants in accordance with clauses 4.2.3 and 4.2.4 above. To assist the Commission in the survey and transfer of the commonage and any alternative land, in so far as it may be necessary.

#### **4.6 DEPARTMENT OF WATER AFFAIRS AND FORESTRY (DWAF)**

The Department of Water Affairs and Forestry or its managing agency undertake to:

- 4.6.1 enter into partnership with the claimants with regard to the management of the forest on farm 287 as the definition of State Land in the National Forests Act, 1998 (Act No.84 of 1998);
- 4.6.2 explore possible development ventures and eco-tourism within the parameters of the applicable legislation;
- 4.6.3 do all that is necessary to ensure restoration in so far as it is relevant.

#### **4.7 DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND TOURISM (DEAT)**

The Department of Environmental Affairs and Tourism or its managing agency undertake to:

- 4.7.1 ensure that its obligations as defined herein are implemented by the managing agency;
- 4.7.2 support the signatories hereto in facilitating appropriate eco-tourism development within the framework set in clause 4.1.2 above;
- 4.7.3 Continue to allow and facilitate access to the sea at Nature's Valley through the National Park.

#### **5. THE PREPARATION OF THE DEVELOPMENT PLAN**

- 5.1 The DLA will appoint an appropriate service provider with relevant development experience to prepare the community development and business and asset management plan and budget (the Development Plan). The service provider will compile the plan and budget in accordance with the directives and principles contained in this agreement, with particular reference to clause 4.1.2, after consultation with and on the basis of developmental principles determined by the interim steering committee.
- 5.2 The plan must provide for the development of the restored portions of Subject Land, alternative State Land, and Community Land in a sustainable, affordable and integrated manner taking into account the development needs of the previously disadvantaged surrounding communities. It must provide for and ensure that the Subject Land and other assets are managed in a sustainable manner.

#### **6. CLAIMANT SETTLEMENT AGREEMENT**

- 6.1 The Commission shall through negotiations with the Covie Committee, formulate the terms of the Claimant Settlement Agreement to be concluded between the State and the Claimants, which agreement will fully and finally settle this claim for the purposes of restoration and development

- in accordance with the recommendations of the Development Plan;
- 6.2 The Claimant Settlement Agreement will inter alia:
- 6.2.1 Indicate the properties or describe the "rights in land" (as provided for in Section 1 of the Act) that were dispossessed;
- 6.2.2 Indicate and determine the monetary value of the claim;
- 6.2.3 Specify the benefits to which the claimant is entitled to and which benefits may include other settlement benefits;
- 6.2.4 Confirm that the claimant has no further claim to any portion of the claimed land;
- 6.2.5 Confirm that the Claimant fully appreciates that the development shall be undertaken in stages, that the Claimant will abide by the development process and time frames and will undertake development in accordance with the framework as set out in clause 4.1.2;
- 6.2.6 Stipulate the conditions subject to which the grants referred to in paragraph 7 below, will be made available for development;
- 6.2.7 Authorise the Covie Committee or legal entity to be formed, to conclude the remaining implementation agreements on the Claimant's behalf, within the parameters provided by this Memorandum;
- 6.2.8 Include a concise summary of the material terms and conditions of the remaining Implementation Agreements that affect the cost of the development;
- 6.2.9 Indemnify the Commission against any future claims made by any person in respect of the claim settled by the Settlement Agreement;
- 6.2.10 The Claimant Settlement Agreement formulated by the Commission shall constitute a written offer to the Claimant to settle this claim in terms of Section 42D of the Act;
- 6.2.11 The Section 42D agreement shall contain the following clauses in respect of land restored:
- "No person may, within a period of ten years with regards to the 16 allotments and alternative land and twenty years with regards to the remainder of erf 287 after date of registration in the name of the claimant/community, sell, exchange, donate, lease or otherwise dispose of the subject property or any portion thereof after the registration thereof in the name of the claimant/community."
- And
- "(a) In the event of pending legal proceedings for the attachment or sale of the subject property or any portion thereof in execution of a judgment of a court –
- (i) the Minister will acquire an option to purchase such property or portion;
- (ii) the clerk of the court or the registrar must notify the Minister of such proceedings and his or her option to purchase such property or portion;
- (iii) the proceedings in the court must be stayed pending the decision of the Minister whether to exercise the option to purchase.
- (b) The Minister must notify the clerk of the court or the registrar within a period of 14 days after receiving the notice contemplated in paragraph (a) of his or her decision on whether to exercise the option to purchase.
- (c) If the Minister decides not to exercise the option to purchase or fails to take a decision whether to exercise the option within the period mentioned in paragraph (b), the stay of the proceedings must be uplifted and the proceedings may be continued."
- 6.2.12 The State shall retain all minerals on the land.

## 7. GRANTS AND SUBSIDIES

- 7.1 The Commission shall make the following grants available, subject to its applicable criteria and processes:
- 7.1.1 A Restitution Discretionary Grant of R3 000 per claimant household;
- 7.1.2 A Settlement Planning Grant of R1 440 in respect of each claimant household, to provide for planning and development assistance;
- 7.1.3 The above grants will be held and distributed in accordance with the provisions of a fund transfer agreement to be concluded between the Commission and the legal entity to be formed.

## 8. PROJECT IMPLEMENTATION AND MANAGEMENT

- 8.1 The parties to this memorandum will constitute an interim steering committee, which will be tasked with the implementation of this Memorandum within the timeframes and subject to the conditions set out herein, in order to enable the parties to enter into a settlement agreement in terms of section 42D of the Act.

- 8.2. The Interim Steering Committee shall consist of one representative from each signatory to this memorandum and three members of the Covie Committee. The Interim Steering Committee shall be chaired by the Department of Land Affairs or its nominee. The persons appointed will be nominated by the respective parties within thirty days of the signing of this Memorandum.
- 8.3. The function of the Interim Steering Committee is to ensure the co-ordination of the activities of the Parties for the purpose of achieving the objective of this Memorandum and to receive formal written reports on the progress of the implementation of this memorandum, or lack thereof and reasons for delays and non-performance, to review work, adjust work plans and ensure the speedy implementation of this memorandum.
- 8.4. The Interim Steering Committee will furnish monthly reports to the parties.
- 8.5. The Interim Steering Committee will at its first meeting establish its rules and procedures and appoint the necessary office bearers provided;
- 8.5.1 At each meeting the parties will agree on the date of the next meeting;
- 8.5.2 Any member of the Interim Steering Committee will be entitled to call a meeting in reasonable written notification to the other members;
- 8.5.3 Unless parties by agreement, appoint another party, the Commission will provide the secretarial services for the committee and prepare and distribute the minutes shortly after each meeting to all members;
- 8.5.4 Any member who has not been in attendance of a meeting will be obliged to establish the date of the next meeting;
- 8.5.5 Any party will be entitled to call another party formally and in writing to account on the extent to which it has made progress in terms of this Memorandum or in the event of a lack of progress, the reasons of the delay or non-performance;
- 8.5.6 A duly convened meeting will constitute a quorum if three members of the Steering Committee are present and at least one member of the Covie Committee and the representative of the Commission are present;
- 8.5.7 The Interim Steering Committee shall strive to make decisions by consensus, however, should a deadlock be reached or a dispute arise during the implementation

of this memorandum, a mediator shall be appointed by the Commission, the cost of which will be borne by the parties in equal shares.

## **9. LAND DEVELOPMENT: LAND HOLDING, SERVICES AND INFRASTRUCTURE**

- 9.1 Any development of the restored land shall take place in terms of paragraph 4.1.2 above and the recommendations of the Development Plan.
- 9.2 The Development Plan will determine the most appropriate legal entity/ies that will take transfer of and manage the land.
- 9.3 The parties agree that the Department of Housing shall prioritise the provision of necessary funding – on application by the municipality – for the provision of bulk services and internal reticulation to the development and to the approval of the Director of Department of Housing.

## **10. TIME FRAMES**

- 10.1 The Parties undertake to do all things possible and to use their best endeavours, in a spirit of co-operation and good faith, to ensure that the Implementation Memorandums are concluded and implemented in accordance with time frames to be negotiated.
- 10.2 A variation of the time frames may be effected by the Interim Steering Committee, on good cause shown, provided that the representatives of the Covie Committee and the Commission are present at a meeting when the decision to vary the time frames is considered and that they support such a proposal.

## **11. LAND CLAIMS COURT**

- 11.1 The parties hereby consent that this Memorandum may, on application by any Party, be made an order of Court in terms of Section 38(B) of the Act.
- 11.2 The provisions of the Act shall apply in relation to any dispute regarding the interpretation and implementation of this Memorandum.

## **12. AMENDMENTS**

All amendments to this Memorandum shall be reduced to writing and be signed by the parties affected hereby, provided that:

- 12.1 The consent of the Commission and the Covie Committee shall be obtained for any amendment to be of force and effect;
- 12.2 The Party effecting an amendment will give the other parties three weeks advance notice and call for their comments, which comments if received, will be considered by the amending parties;
- 12.3 The Commission will ensure that any amendments are incorporated in the Memorandum and will

secure the signature of the relevant parties.

**13. NOTICES**

- 13.1 All notices to be given in terms of this Memorandum, shall be given in writing and shall be addressed and delivered to the parties either by registered mail or by hand delivery to their postal or street addresses, as set out in Annexure B.
- 13.2 Any party may change their address and nominated officers aforementioned by giving seven days written notice to that effect to the other parties.

**14. WAIVER**

No relaxation which any party may give in regard to the performance of the other parties' obligation in terms of this Memorandum, shall constitute a waiver of rights unless reduced to writing and signed by such party.

**15. FORMALITY**

This memorandum shall only take effect and become binding upon the parties when signed by all the parties, failing which no party may claim the existence of a memorandum from negotiations having been conducted or concluded in regard thereto or by reason of this memorandum having been drafted or signed by any of the parties.

**16. AUTHORITY**

The signatories to this memorandum warrant that they are duly authorised to sign this memorandum on behalf of the parties hereto.

SIGNED AT \_\_\_\_\_  
 ON THIS THE \_\_\_\_\_ DAY  
 OF \_\_\_\_\_ 2004.

**ADV. DIRK DU TOIT**  
**DEPUTY MINISTER OF AGRICULTURE AND LAND AFFAIRS**

SIGNED AT \_\_\_\_\_  
 ON THIS THE \_\_\_\_\_ DAY  
 OF \_\_\_\_\_ 2004.

**MS. STELLA SIGCAU**  
**MINISTER OF PUBLIC WORKS**

SIGNED AT \_\_\_\_\_  
 ON THIS THE \_\_\_\_\_ DAY

OF \_\_\_\_\_ 2004.

**MS. BUYELWA SONJICA**  
**MINISTER OF WATER AFFAIRS AND FORESTRY**

SIGNED AT \_\_\_\_\_  
 ON THIS THE \_\_\_\_\_ DAY  
 OF \_\_\_\_\_ 2004.

**MR. MARTHINUS VAN SCHALKWYK**  
**MINISTER OF ENVIRONMENTAL AFFAIRS AND TOURISM**

SIGNED AT \_\_\_\_\_  
 ON THIS THE \_\_\_\_\_ DAY  
 OF \_\_\_\_\_ 2004.

**MR. MARIUS FRANSMAN**  
**MEC FOR HOUSING: WESTERN CAPE LEGISLATURE**

SIGNED AT \_\_\_\_\_  
 ON THIS THE \_\_\_\_\_ DAY  
 OF \_\_\_\_\_ 2004.

**MR. THOZI GWANYA**  
**CHIEF LAND CLAIMS COMMISSIONER**

SIGNED AT \_\_\_\_\_  
 ON THIS THE \_\_\_\_\_ DAY  
 OF \_\_\_\_\_ 2004.

**ALDERMAN EUAN VERNON WILDEMAN**  
**MAYOR OF BITOU LOCAL MUNICIPALITY**

SIGNED AT \_\_\_\_\_  
 ON THIS THE \_\_\_\_\_ DAY  
 OF \_\_\_\_\_ 2004.

**MR. JOHN PEDRO**  
**CHAIRPERSON: CLAIMANT COMMITTEE**

## Appendix 2: Membership criteria

### *Principles Guiding Covie Membership*

Must relocate to Covie within three years after the transfer of the land or you will forfeit your membership.

Must attend Covie community meetings (may not miss more than two meetings annually without excuse).

Must pay a R50 annual membership fee.

Must work within Covie for at least 14 days of the year towards establishing a sustainable community.

May not sell land outside the community even if you get individual ownership.

Must be above the age of 18 years and have dependents.

Within a marriage the person with the tie to Covie will be the member.

Only people prepared to abide by these principles can become members of Covie.

### **Category B**

<b>No.</b>	<b>Erf No.</b>	<b>Original owner</b>
1	276	Debra & Johannes Toring
2	280	John Dixon
3	276	Norman Roman
4	284	James Constable
5	278	Freddy & Eddy Dixon
6	277	Peter Roman
7	266	Gladys & Geoffrey Kivido
8	278	Jacobus & Irene Pedro
9	281	Lesly & Fredah Boesak
10	270	Peter & Edna Barnardo
11	273	John & Eva Pedro
12	285	Eric & Elizabeth Dixon

### **List of Category A and B Members**

#### **Category A**

<b>No.</b>	<b>Erf No.</b>	<b>Original owner</b>
1	272	Irene Barnardo
2	274	Jean Davids
3	278	Hendrik Pedro
4	279	Isaak Boezak
5	280	John Dixon
6	281	Danny Stander
7	282	Petrus Christian
8	284	Magdalena Pedro
9	263	Anglican Church



## Appendix 3: Covie Development, Tenure, Business and Asset Management Plan

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- 11 Steering Committee Minutes
- 12 Project Management Team Minutes
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- 15 Covie Claimant Committee Minutes
- 16 Relevant Correspondence
- 17 Covie Picture Tapestry

## **Appendix 4: Covie vision for a sustainable rural settlement**

### **1. Introduction**

This summary is compiled by the Southern Cape Land Committee on behalf of the MoU steering committee. The information is based on two vision workshops facilitated with the Covie community and on a presentation made by the Covie chairperson to the Steering Committee on 28 May 2004 (in Afrikaans).

It must be noted that this is the initial Covie community vision which will be expanded and informed during the process of compiling the Covie Development Plan.

### **2. Vision of the Covie Community**

The primary vision is for a sustainable rural settlement where the Covie community can enjoy a quality of life on the land from which they lost rights. The community is united in the wish to preserve the character and beauty of Covie including the fynbos, views, forests and possibly even gravel roads.

#### **2.1 The Covie Community**

These are the same criteria for membership, A to G, that appear in 2.3 of the main text.

#### **2.2 Town establishment**

A portion of Covie (possibly the plots that the Department of Housing is selling to the community) will be developed into a township. The vision is that the houses will be built in the most appropriate and affordable manner using the natural resources of the region and will avoid all traditional RDP style low-cost housing. It is not clear how many families will take up residence in Covie. This will be established by the Development Plan.

The township portion will also have appropriate and affordable service provision with the support of the Bitou Local Municipality. The vision is for a settlement using eco-village principles with plots that are big enough to encourage home gardens and a green area.

#### **2.3 Communal agriculture**

A portion of the commonage will be used for communal agricultural practises including a community garden and grazing for possible beef production. There are also ideas for soft fruit production such as grapes, figs and citrus.

#### **2.4 Agro-forestry**

The natural resources of the forest including alien vegetation will be used to provide income-generating projects. Possibilities exist for wood lots to provide charcoal, firewood and droppers. A nursery is also planned including ferns and medicinal plants. Carpentry and furniture making from Blackwood and acacia is also planned.

#### **2.5 Small-scale agriculture**

Opportunities have been identified for agricultural projects and niche markets. Various restaurants have already been approached by the community with proposals for growing and marketing. Other small-scale agricultural projects envisioned are chickens, geese and turkeys and a possible piggery.

#### **2.6 Tourism**

One of the primary opportunities for Covie is tourism. Home stays are already generating some income in Covie and the community wish to expand these businesses. There are ideas for a tourist venture in the indigenous forest of the commonage which has access to the beach near Natures Valley. Hiking trails and possible horse trails are envisioned.

#### **2.7 Rural industries**

Covie has clay and the community wish to begin a pottery enterprise. The women of Covie are already making various crafts. Other industries under discussion by the women in particular are green woodworking, clay oven baking and restaurant, toy making and weaving reeds and grass.

There is a small quarry in Covie with potential to continue providing and selling gravel.

### **3. Stakeholders**

Covie envisions that post settlement support and support in the implementation of the development plan will be provided by members of the steering committee.

- It is envisioned that SANPARKS and DEAT will support community-based tourism opportunities and build capacity for the same.
- Bitou Local Municipality for appropriate service provision and possible transfer of the township part of the community into the municipality's care.
- DWAF will be approached to provide training and expertise to the forestry projects.

Besides the members of the steering committee, the community see other state departments offering support:

- The community plan to approach the DoA for support for agricultural projects.

- Service providers such as Umthombo Trust may be approached for training particularly for the rural industries.
- The Southern Cape Land Committee will continue to work with Covie particularly around institutional arrangements and building accountable leadership structures.

#### **4. Conclusion**

It is the community's intention to keep Covie a rural area; therefore the plan is for sustainable environmentally friendly

projects that will benefit the community without degrading the land and its natural resources. Covie believes land is an asset which can improve livelihoods if used wisely and productive land is sustained. This will be achieved through education and, with the support of the state departments already mentioned, will lead to poverty eradication in Covie and reduction in the region. As the Covie community gains access to the land and control over the natural resources a sustainable community will result.

## **Appendix 5: Terms of Reference**

### **SCOPE OF WORK FOR COVIE COMMUNITY CLAIM DEVELOPMENT PLAN**

#### **DRAFT TERMS OF REFERENCE FOR COVIE DEVELOPMENT PLAN**

#### **Prepared by the Regional Land Claims Commission**

Private Bag X9130, Cape Town, 8000

Tel: 021 426 2930

Tel: 021 424 5146

#### **1. DETAILS**

Province: Western cape

Project Name : Covie Community Claim Project Officer :  
Mac Nodliwa/Maseleka Kgatla

#### **2. PURPOSE OF PROPOSAL**

It is in the intention of the Regional Commission on Restitution of Land Rights: Western Cape (CRLR) and the Covie Steering Committee to appoint a Service Provider to facilitate/undertake the Development Plan of the Covie Community land.

#### **3. CONTEXT**

##### **3.1. Historical background**

The land under claim is Farm 287 Covie situated in the District of Knysna in the Western Cape Province. The land measures 30,893 hectares in extent.

The claim for the land was lodged by Mrs Irene Elizabeth Bernardo on behalf of Covie claimants. The existing Claimant Committee is chaired by Mr John Pedro and Mrs I E Bernardo is the secretary.

Covie was a woodcutter's location, established in 1883 in terms of a Deed of Grant. In 1884 the land was divided into thirty allotments whereof each of the woodcutters were allocated two morgen. The remainder of the land, measuring approximately 650 hectares was declared a commonage and was used for communal grazing.

The commonage stretched to the high-water mark at sea level, thus providing the Covie community access to the sea, in order to fish for subsistence purposes.

In 1964 and 1974 two proclamations were promulgated in order to declare portions of the commonage as part of the Tsitsikamma National Park and for conservation purposes.

In 1978 Covie was declared a Coloured Group Area in terms of the Group Areas Act (Act 3 of 1966), Proclamation 242 of 1978. Immediately after the departure of White residents, all services such as road repair, water supply in terms of drought, housing and fire breaks were discontinued. This remains the status quo to date.

The Covie community therefore lodged a claim for the restoration of the land. The Commission is satisfied that the land claim meets the criteria as stipulated in terms of the Restitution of Land Rights Act No 22 of 1994, as amended. The Regional Commission has determined the Monetary Value of the Claim in the amount of R9 million as per valuation. The Department of Housing has agreed to restore 16 residential allotments at cost price to the claimants. The Department of Public Works has agreed to the restoration of the remainder of the commonage, which falls outside of the Tsitsikamma National Park and State land situated in the Knysna District or surrounds to be identified by the Department of Public Works and the Commission as a suitable award to the claimants in lieu of the portion of land, approximately 150 hectares in extent, that was incorporated into the Tsitsikamma National Park. The Commission has signed a Memorandum of Understanding with the other important role players for the restoration and development of the Covie land in accordance with the Development Plan, which means the Community Development, Environmental, Business and Asset/Infrastructure Management Plan.

##### **3.2 Profile of Claimants**

- a) The claimants have not been verified.
- b) The members of the Covie community will in future constitute themselves appropriately, in accordance with the Development Plan to take transfer of the land. To date there are some (number) members of the community as claimants and/or beneficiaries. (Members of the community who are claimants and beneficiaries respectively are as yet unclear – the verification process, (a) supra, will determine this).

#### **4. FRAMEWORK**

The Commission on Restitution of Land Rights is a statutory body tasked with the restitution of land rights, which were lost as a result of racial legislation or practice. The form of the restitution can take a number of forms, including the provision of alternate state land or the restoration of the original land lost. With regards to Covie the claimants will be receiving restoration of some of their lost residential plots and alternative state land in lieu of land lost and now incorporated into the Tsitsikamma National Park.

One of the primary responsibilities of the Commission when land is awarded is to facilitate the transversal and holistic

planning of use of the restitution award and the facilitation of the implementation plan. In order to undertake the former the Commission makes use of Service Providers to provide an articulation of the needs and aspirations of the claimants, in line with the government policy of eradicating poverty and fostering sustainable development and protecting the environment (as well as its biodiversity).

## 5. PROJECT IMPLEMENTATION PROPOSAL

### 5.1. The aims of the project:

To appoint a service provider to facilitate the pre-planning of a measurable and sustainable Livelihood/Infrastructure Development Plan within the parameters of the existing legislation and policies taking into account the communities' vision for a sustainable rural settlement, the importance of the restitution award; the surrounding physical environment (such as the neighbouring conservation area); the principles of sustainability and the approved agreement as set out in the Memorandum of Understanding signed by the following role players.

1. The Department of Land Affairs / The Commission on Restitution of Land Rights.
2. The BITOU Local Municipality
3. The Provincial Department of Housing
4. The Department of Public Works
5. The Covie Claimants Committee
6. The Department of Environmental Affairs and Tourism
7. The Department of Water Affairs and Forestry.

### 5.2. Objective of the Memorandum of Understanding

The objective of the signed memorandum is:

- 5.2.1 To constitute a framework in terms of which Sustainable Livelihood and Development can take place;
- 5.2.2 Prepare the way for the final settlement of the claim in terms of section 42D of the Restitution of Land Rights Act (Act 22 of 1994 as amended);
- 5.2.3 Provide for the appointment of a service provider with relevant and extensive development experience to prepare the plan. The plan will be compiled in accordance with the directives and principles contained in the signed Memorandum of Understanding;
- 5.2.4 Provide for the development of the restored portions of Subject Land as defined in the Memorandum of Understanding in a sustainable, affordable and integrated manner taking into account the development needs of the previously disadvantaged surrounding communities;
- 5.2.5 Provide for and ensure that the Subject Land and other assets are managed in a sustainable manner.

### 5.3. The Development Plan outline

The plan must provide for the development and management of the Subject Land in a sustainable, affordable and integrated manner taking into account the development needs of the previously disadvantaged community.

- 5.3.1. The following land uses are to be considered and proposals offered:

- 5.3.1.1. Agricultural types of land uses;
  - 5.3.1.1.1 Cultivated land (dry land farming/irrigated cropping);
  - 5.3.1.1.2 Non-cultivated land (intensive/extensive grazing);
  - 5.3.1.1.3 Mixed agriculturally based land uses (mixed farming/ agro-forestry);
  - 5.3.1.1.4 Food gardening;
- 5.3.1.2 Forestry (plantation forestry);
- 5.3.1.3 Conservation and protection of biodiversity including eco-tourism and indigenous forestry;
- 5.3.1.4 Industrial, Commercial and Retail areas;
- 5.3.1.5 Residential areas:
  - 5.3.1.5.1 Framework Plan, including rezoning and Environment Impact Assessment Report;
  - 5.3.1.5.2 Precinct Plans;
  - 5.3.1.5.3 Site Development Plan;
  - 5.3.1.5.4 Individual subdivision plan for each erf;
  - 5.3.1.5.5 Appropriate and affordable housing and service provision.

- 5.3.2. The Consultant should also consider the following:
  - 5.3.2.1 A Concept Land Use And Layout Plan for the Subject Land detailing options for allocation of land (commercial, residential, environmental and agricultural) rights to land and benefits from land use and how these will be administered;
  - 5.3.2.2 Human Resource and Capacity Development Plan (training and capacity building of beneficiaries/resource management and the identification of possible sources of acquisition of skills);
  - 5.3.2.3 Analysis of Stakeholders and their involvement (government departments/ NGOs/etc) including possibilities for joint ventures and public private part-

- 5.3.2.4 Investment and Marketing Opportunities focussing on partnerships, community projects and individual projects;
- 5.3.2.5 Project Management requirements for each aspect of the development and the communities' role therein;
- 5.3.2.6 Determination of Funding availability and Budget based on estimated funding availability;
- 5.3.2.7 Tenure rights and land management proposals for all land and developments in question, as well as governing principles for the outcome of any developments and initiatives;
- 5.3.2.8 Claimants Involvement in the following:
- 5.3.2.8.1 Workshoping of all decisions to be made with regard to land use, development of partnerships, approvals required, etc;
- 5.3.2.8.2 Present and future land use options;
- 5.3.2.8.3 Collective understanding of the community's prioritised land use needs;
- 5.3.2.8.4 Specifying various categories of claimants and benefits to which each is entitled;
- 5.3.2.8.5 Options for the appropriate management and holding of the land earmarked for particular uses (residential, commercial, environmental and agricultural);
- 5.3.2.8.6 Services required and suggested affordable options;
- 5.3.2.8.7 Input around appropriate housing infrastructure informed by presentation of possibilities;
- 5.3.2.8.8 Critical assessment, discussion and consolidation of all existing planning documents within the community;
- 5.3.2.8.9 Assessment of current capacity, skills and experience within the community;
- 5.3.2.8.10 Assessment of the resource base carried out, combining expert technical knowledge with local knowledge. This assessment should cover the existing resources;
- 5.3.2.9 An assessment of statutory requirements and approvals required as well as the completion of the necessary reports to attain these approvals, such as rezoning, sub-division of agricultural land, Environmental Impact Assessments;
- 5.3.2.10 Drafting of preliminary spatial plans and to dovetail with the Local Authority/ Municipality's Integrated Regional Development Plans (All Spheres of government);
- 5.3.2.11 Proposals for tools to monitor and evaluate the project progression.

## 6. KEY PERFORMANCE INDICATORS

- A contextual report that engages with the expectations of the claimant community; is compliant with the Terms of Reference and guided by all existing related legislation, policies, and approvals requirements.
- The reports should be user friendly and accessible to the parties to the MoU and project officer.
- Recommendations with Proof of Consent given by the Steering Committee and identifying where Steering Committee members will provide support towards implementation.
- Recommendations with Proof of Consent given by the Covie Land Claims Committee.

## 7. ACTIVITIES AND DELIVERABLES

The Service Provider shall undertake the following Activities:

- Workshop to introduce the Service Provider, set out the process and set out ground rules to guide the process;
- Drafting of the required reports;
- Reporting to the Steering Committee as instructed by the SteerCom;
- Regular and correctly constituted workshops to facilitate capacity building, decision-making and identification of skills requirements;
- Attain the required approvals as set out in this Terms of Reference;
- Source all relevant documentation and supporting documents, e.g. maps, diagrams, provisional draft development concepts by the community, etc.;
- Provide relevant information to enable the community to take informed decisions;
- Compile the plan in a participatory manner building on existing community visions, the IDP and contents

- of the MOU;
- Ensure the Covie committee is included in all discussions with stakeholders towards generating ideas;
- Present the plan to the Covie community and the Steering Committee.

The Service Provider shall provide the following Deliverables:

- A contextual report on the process and methodology followed;
- The following items will be reported on, with definitive proposals:
  - A Concept Land Use And Layout Plan;
  - Human Resource and Capacity Development Plan ;
  - Stakeholders analysis;
  - Investment and Marketing Opportunities;
  - Project Management requirements;
  - A Funding report and proposals for attaining further funds;
  - Budget;
  - Tenure rights and land management plan;
  - Report on claimant involvement and decision-making;
- A report on the required statutory approvals, as well as all completed applications in this regard;
- Proposals for tools to monitor and evaluate the project progression;
- Proof of Consent of the Steering Committee and the Covie Land Claims Committee and identifying where Steering Committee members will provide support towards implementation;
- All relevant documentation and supporting documents, e.g. maps, diagrams, etc.

## 8. PROJECT IMPLEMENTATION SCHEDULE

Please indicate the number of person-hours to be used for the project, the start and end dates, as well as a project timetable highlighting the accomplishment of key project activities or milestones. These will be used to monitor the progress of the project, as well as giving an indication of expenditure over the course of the project.

Payment will be made only for satisfactory deliverables/ Report. The processing of payment is dependent upon certification by the Regional Land Claims Commissioner, the Covie Land Claims Committee; and the Covie Steering Committee of the satisfactory delivery of services. Unless and until outputs of the project are certified as satisfactory, payments for these cannot be processed. An indication of the production and delivery per month is essential.

Any proposed extension will have to be motivated to the Covie Steering Committee and the Regional Land Claims Commissioner: Western Cape.

## 9. PROJECT BUDGET

This should be formulated in relation to the anticipated activities to be undertaken, as described in the project implementation proposal. A final total amount must be provided, as well as total number of hours required. A summary giving the number of person-days and person-hours, an indication of the overall cost per hour, as well as the cost per claim, must also be given. The overall total amount must make provision for both (1) professional fees comprising the total number of hours for the project, the hourly rate or rates and the like, and (2) non-professional administrative expenses.

Apart from completion of the prescribed ST7.3 PRICING SCHEDULE, the format of the detailed budget proposal accompanying the tender proposal should clearly differentiate between (1) professional fees and (2) non-professional expenses. These non-professional expenses should include, inter alia, where applicable,

- transport costs for distances covered and per kilometre;
- hotel accommodation charges; and
- catering costs per head.

The total price tendered by the SERVICE PROVIDER as stipulated in the ST 7.3. PRICE SCHEDULE may not be exceeded and reimbursements for no other expenses relating to the Terms of Reference will be made. Reimbursement for additional non-professional expenses incidental to the costs of the survey project will be subject to the written permission of the Chief Land Claims Commissioner and upon actual submission of documentary proof such as invoices, cash receipts and other payment documentation, in accordance with the terms and conditions of the negotiated Section 9 contract agreed and signed by the two parties after the awarding of the tender as signified by a formal letter of acceptance.

Non-professional expenses, if accepted by the Chief Land Claims Commissioner's office will be paid or reimbursed in accordance with departmental tariffs applicable at the time such payment is made. Travelling costs and other incidental costs will be paid strictly in accordance with the prescribed tariffs as determined by the Department of State Expenditure. Should it prove necessary to hire a vehicle, the preferred agent of the Department must be utilised and the category of the vehicle must conform to Departmental prescripts. The tariffs schedule and other details are available upon request from Mr. M. Kamedien at telephone number (021) 658 4300.

**10.1 TERMS AND CONDITIONS**

- The CRLR will provide access to files relating to the claim. The original files may not be removed from the offices of the CRLR and CRLR staff will need to oversee any photo-copying, which may be required.
- The CRLR staff will be available for consultation and political intervention where required.
- The service provider is authorised and instructed to work in co-operation with the claimants committee.
- The service provider should liaise with other relevant parties and all information being treated as confidential.
- The CRLR is subject to legislation with respect to access to information. Should the Service Provider be requested to provide information in terms of the Access to Information Act, the request is to be referred to the CRLR immediately.

**10.2. INFORMATION SESSION**

The CRLR will call an information and presentation session with short-listed tenders necessary for purposes of tender-evaluation or tender-adjudication.

**10.3. REPORTING**

The service provider is directly responsible to the Regional Land Claims Commissioner: Western Cape, or his nominee, who is most likely Mr Mac Nodliwa (021) 426 2930 or Maseleka Kgatla (044) 874 0021.

The service provider will submit a monthly progress report based on work undertaken within seven days after the end of the month. Key activities and outputs shall be indicated, as well as intended activities for the following month. The service provider, project manager and project officers will hold regular meetings to discuss issues arising and interventions required.

At the end of the Development Plan process, the consultant must furnish the CRLR with all original documents relevant to the project, including notes on interviews/workshops. The project report must be submitted in both hard copy

and electronic formats. The electronic formats must be compatible with components of the Microsoft Word suite of programs. All such materials are and remain the property of the CRLR at all times, and no document may be reproduced, copied or distributed without the written prior consent of the CRLR.

**10.4. RECESSON OF APPOINTMENT**

If the service provider is in any way in breach of his/her functions, duties and responsibilities, the Regional Land Claims Commissioner: Western Cape, will be entitled to cancel the appointment by giving two weeks notice of his intention to do so.

**10.5. TRANSPARENCY**

- All information, discussions, documents, and reports must be regarded as confidential by the service provider. Only the CRLR, or its nominee, will have the right to make public any findings.
- As is stipulated above, the CRLR is subject to legislation with respect to access to information. Should the Service Provider be requested to provide information in terms of the Access to Information Act, the request is to be referred to the CRLR immediately.

**ROUTE FORM FOR APPROVAL OF TERMS OF REFERENCE**

Compiled and submitted by  
 ..... Author

Recommended/Amended/Rejected by  
 ..... Project Co-ordinator

Endorsed/Not Endorsed by  
 ..... Research Co-ordinator

Supported/Not Supported by  
 ..... Operations Manager

Approved/NotApproved  
 ..... Regional Land Claims  
 Commissioner





