

## DRAFT

# GUIDELINES FOR THE CONCLUSION OF AGREEMENTS BETWEEN A FUTURE AUTHORITY OR ITS DELEGATE AND VREDEFORT DOME WORLD HERITAGE SITE LANDOWNERS

## 1. Point of departure

- 1.1 The World Heritage Convention Act, no 49 of 1999 ( hereinafter called “the Act”) provides for the exercising of powers by an authority or its delegate on a variety of aspects. Similarly, other legislation (e.g. on water control or land use) provides for control by designated authorities within the Vredefort Dome World Heritage Site ( herein- after called “the Dome”). Many controlling functions can therefore be exercised by legal enforcement.
- 1.2 A reality of the Dome is that land within its boundaries predominantly rests in private hands. There are nearly 800 farms within the Dome’s boundaries. About 480 different landowners are involved, many of them not residing on the farms, but elsewhere in towns and cities (even in Gauteng). A small number of farms are also farmed in terms of leases, with the residing farmer thus not the landowner. Whatever the particular situation, the fact of the matter is that the exercise of powers by the authority or its delegate has to be effected on private land in possession of a variety of people. Legal enforcement without essential collaboration therefore appears not to be the proper route to take.
- 1.3 In the light of the above it becomes very important for the effective functioning of the authority or its delegate to establish agreements with individual landowners. This is true as far as the formal exercise of legal powers is concerned, but also with regard to necessary or convenient practical arrangements between the authority or its delegate and the landowner.

## 2. Tactical considerations

- 2.1 In certain comparable situations agreements between authority and landowners are preconditions before the main project can start functioning. This will be the case if all landowners have to sign essential release agreements with a game reserve authority before the reserve can become operational. However, with respect to the Dome

authority or its delegate this is not the case. It is nevertheless an urgent step to generally have in place as soon as possible after establishment of the authority or its delegate. In many respects such authority or delegate will not be able to function smoothly until the agreements are in place.

- 2.2 Looking at such a landowner agreement proposition from a purely practical negotiation angle, it should be kept in mind that no one can be compelled through illegal force or undue influence to enter into an agreement. Agreements should be entered into voluntarily and will normally only realise whenever clear reciprocal needs exist between the parties. At this stage it is easy to visualize such need on the side of the authority or its delegate. However, in many cases it is less clear why landowners would want to sign such agreements. Where the landowner is providing services like guest house accommodation or recreation and adventure activities, it is easy to picture a readiness to enter into a contract (especially where some or other form of ‘accreditation’ by the authority or its delegate is at stake). However, in the event where the landowner “requires nothing from the other party”, the inclination to enter into an agreement may be more obscure. In such cases it will be the task of the authority or its delegate to find some or other legal enticement for the landowner to enter into an agreement.
- 2.3 From the authority or its delegate’s point of view, it may, therefore, be easier to enter into contracts with some landowners than others. Keeping in mind that the agreements in general should be fairly consistent, it may thus not be immediately possible to enter into contracts with all landowners. The authority or its delegate should, nevertheless, always be ready and prepared to conclude an agreement should any landowner so request. Furthermore, the effort to extent the agreements to every landowner (including new ones) should never cease.

### 3. Methodology

- 3.1 With more than 400 landowners, often with quite diverse interests, to accommodate, it stands to reason that some form of standardization is required. A standard contract, taking account of the above exposition, will also have to accommodate the needs of both landowners and authority or delegate. The standard agreement therefore has to be negotiated. This implies that the authority or delegate and all the

- landowners' associations in existence at the time (there is currently one), will have to negotiate such standard agreement.
- 3.2 Hereunder more detail will be supplied, but at this stage it must only be stated that the standard agreement will have to be a comprehensive one. It should provide for landowners running guest houses or involved in recreation and adventure activities, as well as ordinary landowners. It should accommodate landowners whether they have tourist sites on their farms or not. Once such an embracing standard agreement has been negotiated and drawn up, it becomes easy to fill in or add special requirements in some cases and delete those portions not applicable in other situations.
  - 3.3 Due to smaller variations in the agreement (as indicated above) it will not be advisory for an association to sign on behalf of its members. A collective conclusion may give rise to many individual legal uncertainties too. Keeping track of change of land ownership may also become even more problematic.
  - 3.4 Each agreement therefore has to be negotiated, obviously within the boundaries and limitations created by the standard agreement. Thereafter it will have to be signed by the parties.
  - 3.5 To enable such an individualization of the contract the authority or its delegate will have to keep a register of all landowners, their addresses and other useful information. The register will have to be continually up-dated. In this regard it may be useful if each agreement has a clause compelling the landowner to notify the authority or delegate of any change of ownership. Clearly, a fresh agreement will have to be pursued with the new owner, in the event of a change of ownership.
  - 3.6 Although a limited number of farmers are leasing farms (not being owners), it is suggested that agreements should only be concluded with landowners. However, each agreement should provide for a designated residing person where the landowner does not live on the farm. Such a designated person can be the leasing farmer, a foreman or anyone else like for instance a neighbour.

#### 4. Typical agreement provisions

In what follows hereunder some typical issues to be covered by an agreement are listed. This is done in order to assist the negotiating parties and is in no way to be considered a comprehensive list. The contents of the Integrated Management Plan, as well as various practical considerations,

should give rise to a number of contractual stipulations not mentioned at all hereunder.

- Identification of the contractual parties at the beginning and their addresses. At the conclusion of the agreement provision for dates, signatures and place(s) where the agreement was signed.
- It may be very handy to include certain “informational” clauses, for instance: The landholder warrants that he/she is the registered owner of the following property(ies).....; It is recorded that the landowner currently uses his/her property for the following purposes..... ; It is recorded that the landowner currently conducts the following tourism activities on the property.....
- In line with paragraph 3.6 above the agreement should also provide for an indication of a designated person, in the event where the landowner is not residing on the farm.
- It may be convenient too (although not legally necessary) to incorporate a few of the most important statutory provisions with regard to conservation, protected areas, land and water use, etc. The focus here should be on crucial limitations and prohibitions.
- As indicated in paragraph 2.2 above, obligations on the side of the landowner should be balanced off by contractual rights. Here rights conferred by the authority or its delegate should be the focus, and not normal ownership rights.
- As indicated in paragraph 3.5 above the agreement should provide for an obligation to notify the authority or its delegate in the event of change of ownership.
- With regard to conservation management both parties probably have to agree (with reciprocal rights and duties) on a vast number of issues, like: alien plant control, veld fire control, bush encroachment, water management, soil erosion, cattle stocking rates, predator management, consumption of natural resources, waste disposal, etc.
- Fences (normal and game) may be a negotiation subject.
- The whole subject of security appears to be a good “agreement candidate”, with obviously reciprocal rights and duties of both parties and covering not only residents’ security, but also that of tourists.
- Compliance with the approved Integrated Management Plan appears to be a good item for negotiation and incorporation.

- Arrangements for access to private property with regard to rock formations and other tourist attractions are appropriate to be included, with specific reference to suitable days, times and routes.
- Instead of leaving differences of opinion between the parties unprovided for, it is suggested that a full dispute resolution clause (possibly including arbitration) be entered into the agreement.
- Duration of the agreement and ways of termination should be provided for.
- Manner of amending the contract should be spelled out.

#### 5. Relationship building is a core objective

As indicated above, the main purpose of such a landowner agreement is to constitute (and in some cases only reaffirm) reciprocal rights and duties between the parties. Such arrangements are important for a smooth functioning of activities within the Dome. However, sight should never be lost of the fact that such agreements also have another objective. That is to build relationships, through collaboration, between the authority or its delegate and the landowners. The approach should therefore not be legalistic, but rather a participative one.

#### 6. Landowners wishing to contract in

There is a possibility that landowners currently falling outside the Dome area may somewhere in the future wish, depending on developments, to voluntarily include themselves in the domain of the authority or its delegate. If such a need should arise, the standard agreement referred to above, with only slight adaptations, can be utilised for this purpose too.