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NOTICE NO. 25

It is hereby notified that the Premier has
assented to the following Act which is
hereby published for general information:

**Act No. 10 of 1997: North West Housing Infrastructure
and Delivery company Act, 1997**

Hierby word bekend gemaak dat die
Premier sy goedkeuring geheg het aan
die onderstaande Wet wat hierby ter
algemene inligting gepubliseer word:

**Wet No. 10 van 1997: Wet op die Noord-Wes
Behuisings infrastruktuur en voorsienings
Maatskappy, 1997**

To provide for the apportionment of certain powers, functions, assets, liabilities, rights, duties and obligations of the North-West Housing Corporation; to provide for various practical mechanisms, including the establishment of a company, to address the historical disparities in housing delivery; and to provide for matters incidental thereto. (English text signed by the Premier on the 26 November 1997).

BE IT ENACTED by the Premier and the Legislature of the Province of the North-West, as follows:-

Definitions

1. In this Act, unless the context indicates otherwise -

"Board" means the Board of the North-West Housing Corporation established in terms of section 2(1) of the North-West Housing Corporation Act, 1982 (Act No. 83 of 1982);

"Committee" means the Housing Corporation Apportionment Committee established in terms of section 2(1) of this Act;

"Corporation" means the North-West Housing Corporation established in terms of section 2(1) of the North-West Housing Corporation Act, 1982 (Act No. 83 of 1982);

"company" means a company as defined in the Companies Act, 1973 (Act No. 61 of 1973);

"municipality" includes a transitional local council, a transitional representative council and a transitional district council constituting the local government structures in the Province established in terms of the Local Government Transition Act, 1993 (Act No. 209 of 1993);

"responsible Member" means the Member of the Executive Council of the Province responsible for housing; and

"this Act" includes any regulations made thereunder.

Establishment of Housing Corporation Apportionment Committee

2. (1) There is hereby established a committee to be known as the Housing Corporation Apportionment Committee (hereinafter referred to as the "Committee").

(2) The Committee shall consist of -

- (a)** the General Manager (chief executive officer) of the Corporation who shall be the Chairperson of the Committee;
- (b)** such members of the Board as may be determined and designated from time to time by the Board;
- (c)** an officer in the Department responsible for housing in the Province designated by the head of that Department; and
- (d)** a representative designated by the recognised organisation representing municipalities in the Province contemplated by section 163(a) of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996).

(3) The Committee shall, within a reasonable time or within such time as may be determined by the responsible Member, and after due consideration of -

- (a)** the housing policy as may be established from time to time by the National Government and the Provincial Government; and
- (b)** any specific directive of the responsible Member in pursuance of the promotion of housing delivery in the Province,

make recommendations in writing to the responsible Member in relation and pertaining to the exercise by the responsible Member of the powers conferred upon the responsible Member by the provisions of sections 3(1) and 4 of this Act.

Apportionment of powers, functions, assets, liabilities, rights, duties and obligations of North-West Housing Corporation

3.(1) The responsible Member may, after due consideration of the recommendations, if

any, of the Committee referred to in section 2(1), determine that any power, function, asset, liability, right, duty or obligation of the Corporation as may be specified in such determination, shall, with effect from a date mentioned in such determination, forthwith vest in the Provincial Government, a municipality or a company as contemplated by section 5(1).

(2) The Provincial Government, a municipality or the company referred to in subsection (1) shall, in accordance with the determination of the responsible Member contemplated by that subsection in respect of the powers, functions, assets, liabilities, rights, duties and obligations so vested in it, for all purposes be deemed to be the successor-in-law of the Corporation in respect of such powers, functions, assets, liabilities, rights, duties and obligations.

(3) A registrar of deeds as defined in section 102 of the Deeds Registries Act, 1937 (Act No. 47 of 1937), shall, on submission to him or her of a certificate issued by the responsible Member to the effect that any asset or right described in such certificate has vested in the Provincial Government, a municipality or the company by virtue of this section, make such entries and endorsements as he or she may deem necessary in or on any relevant register, certificate or other document in his or her office or laid before him or her, in order to register any such asset or right in the name of the Provincial Government, municipality or the company, as the case may be: Provided that, subject to any applicable national legislation or other approval granted by the National Government, no stamp duty or office or other fees shall be payable in respect of any registration, entry or endorsement contemplated in this subsection.

(4)(a) A determination contemplated in subsection (1) shall be published in the *Provincial Gazette* for information.

(b) The effective date of a determination referred to in paragraph (a) may be a date prior to the date of publication of a notice for information as contemplated in this subsection.

Possible transfer of certain officers or employees of North-West Housing Corporation

4.(1) An individual officer or employee of the Corporation may, in accordance with a

determination made by the responsible Member -

- (a)** after due consideration of the recommendations, if any, of the Committee referred to in section 2(1);
- (b)** subject to applicable labour law;
- (c)** after due consultation between representative employer and employee organisations, where applicable; and
- (d)** with the prior written consent of such officer or employee, as the case may be,

with effect from a date mentioned in such determination, be transferred to and placed in the service of the company as contemplated by section 5(1) on such terms and conditions of service as are not less favourable than under which he or she served as an officer or employee, as the case may be, of the Corporation.

(2) Any person who, in terms of subsection (1), is transferred to and placed in the service of the company as contemplated by section 5(1) shall be appointed and employed on the conditions applying to the appointment and service of officers or employees, as the case may be, by such company: Provided that -

- (a)** the salary or salary scale of such person shall not be reduced on his or her transfer and appointment;
- (b)** vacation leave standing to the credit of such person with the Corporation shall stand to his or her credit with the company;
- (c)** pensionable service performed by such person in the service of the Corporation shall be deemed to be pensionable service performed by him or her in the service of the company;
- (d)** such person shall not, as a consequence of such transfer, acquire a right to retire or to be offered a severance or retrenchment package;
- (e)** such person shall not, as a consequence of such transfer and appointment, acquire a retirement age which is less or more favourable than that which applied to him or her in the service of the Corporation;
- (f)** such person shall, within six months after his or her transfer to and appointment by the company, be afforded a non-recurrent choice either to remain a member of the pension or provident fund of which he or she was a member while in the service of the Corporation or to become a member of the pension or provident fund applicable to officers or employees, as the case may be, of the company, subject to the laws and rules applicable to the pension or

provident fund of the company;

(g) any disciplinary steps, considered or instituted, against such person in terms of the provisions of any law arising from alleged misconduct or improper conduct committed before the date of his or her transfer and appointment shall be dealt with in terms of the provisions of the laws applicable to officers or employees, as the case may be, of the Corporation as if such person was still an officer or employee, as the case may be, of the Corporation at the time when the alleged misconduct or improper conduct was committed.

(3) Any person who unreasonably refuses or withholds his or her consent to be transferred as contemplated by this section, shall not be entitled to any severance benefit or benefits in the event of his or her post becoming redundant within a period of two years from the date upon which such refusal or withholding of consent had been communicated to the Corporation by or on behalf of the person concerned.

(4) In so far as any provision of this section may be incompatible or irreconcilable with any provision of the North-West Housing Corporation Act, 1982 (Act No. 83 of 1982), the provisions of this section shall prevail and the provisions of the above-mentioned Act shall be deemed to have been amended accordingly.

Responsible Member may form company and acquire shares

5. (1) The responsible Member may, with the concurrence of the Executive Council of the Province -

(a) promote, form and register a company which shall, subject to the approval of the Registrar of Companies, be known as the Housing Infrastructure and Delivery Company ("HIDCO"); and

(b) by virtue of his or her office, on behalf of the Provincial Government acquire and hold shares in such company:

Provided that the objectives of such company shall be -

(i) the development of land and the provision of infrastructure on land, including the construction of dwellings for residential purposes, in furtherance of housing development and in pursuance of the promotion of housing delivery in the Province; and

(ii) directly related to the promotion and implementation of housing policy as

may be established from time to time by the National Government and the Provincial Government.

(2)(a) The total number of shares issued and allocated in the company contemplated in subsection (1) shall, initially, both as to the number and value thereof determined by the Executive Council of the Province, be held by the responsible Member by virtue of his or her office on behalf of the Provincial Government in terms of that subsection: Provided that different types, classes or categories of shares may be issued and allocated, some of which shall be vested with voting rights.

(b) The memorandum and articles of association of such company in which shares are held as contemplated by paragraph (a) shall provide that the responsible Member may systematically reduce or divest his or her shareholding by virtue of his or her office on behalf of the Provincial Government, or any portion of such shareholding, whether of all or a certain type, class or category of shares, in the company in accordance with a programme contained in the memorandum and articles of association.

(3) The Provincial Government shall be represented on the board of directors of the company by the responsible Member by virtue of his or her office and by such other person or persons as may be determined and designated from time to time by the responsible Member in accordance with the memorandum and articles of association of the company.

Duties of Housing Infrastructure and Delivery Company in respect of role of municipalities in housing delivery

6. The company contemplated by section 5(1) shall, in pursuance of its objectives as determined in that section –

(a) actively promote the role of municipalities in housing delivery in accordance with the powers, duties and functions vested in, assigned or delegated to municipalities in respect of housing delivery by or under any applicable law; and

(b) when entering into an agreement with a municipality to develop land or to provide infrastructure on land, including the construction of dwellings for residential purposes, for or on behalf of such municipality, in addition to any specific term or condition contained in such agreement, generally assist the

provident fund of the company;

(g) any disciplinary steps, considered or instituted, against such person in terms of the provisions of any law arising from alleged misconduct or improper conduct committed before the date of his or her transfer and appointment shall be dealt with in terms of the provisions of the laws applicable to officers or employees, as the case may be, of the Corporation as if such person was still an officer or employee, as the case may be, of the Corporation at the time when the alleged misconduct or improper conduct was committed.

(3) Any person who unreasonably refuses or withholds his or her consent to be transferred as contemplated by this section, shall not be entitled to any severance benefit or benefits in the event of his or her post becoming redundant within a period of two years from the date upon which such refusal or withholding of consent had been communicated to the Corporation by or on behalf of the person concerned.

(4) In so far as any provision of this section may be incompatible or irreconcilable with any provision of the North-West Housing Corporation Act, 1982 (Act No. 83 of 1982), the provisions of this section shall prevail and the provisions of the above-mentioned Act shall be deemed to have been amended accordingly.

Responsible Member may form company and acquire shares

5. (1) The responsible Member may, with the concurrence of the Executive Council of the Province -

(a) promote, form and register a company which shall, subject to the approval of the Registrar of Companies, be known as the Housing Infrastructure and Delivery Company ("HIDCO"); and

(b) by virtue of his or her office, on behalf of the Provincial Government acquire and hold shares in such company:

Provided that the objectives of such company shall be -

(i) the development of land and the provision of infrastructure on land, including the construction of dwellings for residential purposes, in furtherance of housing development and in pursuance of the promotion of housing delivery in the Province; and

(ii) directly related to the promotion and implementation of housing policy as

municipality in building capacity to enable the municipality to fulfil its statutory role in housing delivery referred to in paragraph (a) of this section.

Housing Corporation, Provincial Government or municipality may second any officer or employee to or place his or her services at the disposal of company

7.(1) Any or all of the Corporation, the Provincial Government and a municipality may, with effect from a date determined by the Corporation, the Provincial Government or such municipality, as the case may be, after due consultation with the relevant representative employee organisation and with the written consent of the officer or employee concerned, second any such officer or employee to or place the services of any such officer or employee at the disposal of the company as contemplated by section 5(1): Provided that any such secondment or placement of services at the disposal of the company shall in no way effect a transfer, or be construed as effecting a transfer, of the officer or employee concerned to the company.

(2) In so far as any provision of subsection (1) may be incompatible or irreconcilable with any provision of the North-West Housing Corporation Act, 1982 (Act No. 83 of 1982), the provisions of subsection (1) shall prevail and the provisions of the above-mentioned Act shall be deemed to have been amended accordingly.

Responsible Member may make regulations

8.(1) The responsible Member may -

(a) make regulations concerning -

(i) the powers, duties and functions and the terms and conditions of service of the chief executive officer and any or all officers or employees of the company as contemplated by section 5(1);

(ii) the powers, duties and functions of the members of the board of directors of the company as contemplated by section 5(1): Provided that any such regulation shall be consistent with the relevant provisions of the Companies Act, 1973 (Act No. 61 of 1973), and the memorandum and articles of association of the company; or

(iii) any matter referred to in this Act which, in the opinion of the responsible Member, is or may be necessary or expedient for the effective

carrying out or furtherance of the provisions and objects of this Act;

(b) in consultation with the Member of the Executive Council of the Province responsible for finance, make regulations concerning the remuneration and allowances and other benefits, including subsistence and travel allowances, of -

(i) the chief executive officer and any or all officers or employees; or

(ii) the members of the board of directors,

of the company as contemplated by section 5(1); or

(c) if in the application of this Act or any other law pertaining to housing or related matters administrative problems are being experienced, make regulations to remove such administrative problems.

(2) A regulation made under subsection (1) may provide that any person who contravenes a provision thereof or fails to comply therewith shall be guilty of an offence and on conviction be liable to a fine, or to imprisonment not exceeding five years.

Short title

9. This Act shall be called the North-West Housing Infrastructure and Delivery Company Act, 1997.

**MEMORANDUM ON THE OBJECTS
OF THE
NORTH-WEST HOUSING INFRASTRUCTURE AND DELIVERY COMPANY
BILL, 1997**

The North-West Housing Infrastructure and Delivery Company Bill, 1997, seeks to regulate the promotion of housing delivery in the Province in a new and dynamic way. As early as last year the Member of the Executive Council responsible for housing mandated a task team consisting of officials from the Provincial Government, the North-West Housing Corporation and other specialist advisers to investigate and make proposals on expediting housing delivery in the Province especially to the poorest of the poor.

The Bill reflects the recommendations of the task team as approved in principle by the Executive Council of the Province.

The Bill is not the final word in relation to promotion of housing delivery in the Province, but represents the first step in a dynamic initiative to provide for various practical mechanisms to address the historical disparities in housing delivery including the mechanism of the company as contemplated in the Companies Act, 1973.

A new redefined role in relation to various aspects of housing delivery is envisaged for the existing North-West Housing Corporation (hereinafter referred to as the Corporation) which will, for the time being, exist alongside a company to be established as contemplated in clause 5 of the Bill to be known as the Housing Infrastructure and Delivery Company ("HIDCO") which will have a distinct role and function in relation to other aspects of housing delivery. The Member of the Executive Council responsible for housing (hereinafter referred to as the MEC) and key officials in the Corporation (constituting the Committee referred to in clause 2) are tasked with the apportionment of powers, functions, assets, liabilities, rights, duties and obligations (as well as personnel) of the existing Corporation between the Corporation and the company to be formed. In the restructuring and reapportionment of housing delivery responsibilities, it would also be possible to apportion certain identified powers and functions (and their attendant assets, liabilities, rights, duties and obligations) not only to the new company which is envisaged, but to the Provincial

Government and existing municipalities. The Provincial Government, parastatals and municipalities all have co-operative responsibilities in housing delivery which must be co-ordinated and settled to give effect to National and Provincial housing policy in a co-ordinated and synergistic manner.

It is therefore the responsibility of the Committee and the MEC to ensure that the most appropriate apportionment of functions and responsibilities is made to address current needs and circumstances in relation to housing delivery in the Province.

Clause 1 of the Bill contains the definitions which are largely self-explanatory.

Clause 2 of the Bill envisages the establishment of the committee (which has been alluded to above) specifically tasked with making recommendations on this envisaged apportionment to the MEC and clause 3 deals with the legal technicalities of giving effect to such apportionment.

Clause 4 addresses the possible transfer of certain individual officers or employees of the Corporation to the new company. It is to be emphasised that the rights of officers and employees are adequately protected by the clause and transfers will, amongst other things, only be considered with the written consent of officers or employees after the required consultation has taken place. Only those officers or employees who choose to be transferred to any new company and which the company wishes to employ will be transferred with full protection of their rights.

Clause 5 authorises the MEC to form a company with objects directly related to the promotion of housing delivery in the Province. The Provincial Government will initially have a controlling interest in the company through its shareholding and will always be represented on the board of directors of the company to ensure that the company functions in accordance with the housing policy of the National Government and the Provincial Government.

Clause 6 attempts to deal with concerns expressed that the new envisaged company may usurp the role of municipalities in housing delivery. This clause places a responsibility on the new company to actively promote the role of municipalities in housing delivery and to assist municipalities in building capacity to enable

municipalities to fulfil their statutory (in terms of national and provincial housing legislation) role in housing delivery.

Clause 7 makes it possible to kick-start the functioning of the new company by authorising the Housing Corporation, the Provincial Government or a municipality to second officer or employee to or place his or her services at the disposal of a company with the written consent of such officer or employee. Such secondment would create immediate capacity within the new company, but in no way constitutes a transfer to the company concerned. Transfers are addressed in clause 4 above. The new company would naturally also have the power to employ persons in its own right.

Clause 8 authorises the MEC to make regulations in respect of certain listed issues and other matters which may, in the implementation of the legislation, prove to be necessary or expedient for the effective carrying out or furtherance of the provisions of the Bill.

Clause 9 contains the short title of the Bill which is self-explanatory.

INTERESTED PERSONS OR BODIES CONSULTED:

The Executive Council of the Province of the North-West;
the North-West Housing Corporation;
the Provincial Housing Board; and
organised local government in the Province (NORWELOGA),

were consulted in the drafting of the proposed Bill.