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**IN THE HIGH COURT OF SOUTH AFRICA  
(WESTERN CAPE DIVISION, CAPE TOWN)**

Case No. \_\_\_\_\_

In the matter between:

**THOZAMA ANGELA ADONIS  
AND OTHERS**

First Applicant

and

**MINISTER OF TRANSPORT AND PUBLIC WORKS:  
WESTERN CAPE PROVINCE**

First Respondent

**AND OTHERS**

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**SUPPORTING AFFIDAVIT OF SUSAN MARION PARNELL**


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I, the undersigned,

**SUSAN MARION PARNELL**

do hereby make oath and say:

1. The facts deposed to in this affidavit are within my personal knowledge, except where I indicate otherwise. To the extent that I rely on information supplied by others, I believe that such information is true and correct.
2. I am a professor in the Environmental and Geographical Sciences Department of the University of Cape Town. I attach a copy of my curriculum vitae marked “SM1” which should be read as specifically incorporated into this affidavit.

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3. This affidavit consists of a summary of my views compiled for purposes of the interim interdict application. To the extent necessary, I will formulate my opinions in greater detail in a further affidavit in support of the final relief to be sought by the Applicants.

### **SPATIAL SEGREGATION**

4. The City of Cape Town ("the City") describes Cape Town as "a sprawling (2 359 km<sup>2</sup>), low-density (1 520 people per km<sup>2</sup>) and spatially fragmented city of 3.74 million people".<sup>1</sup>
5. While apartheid urban planning affected all South African cities, it was particularly effective in Cape Town, because of the city's unique topographical layout and racial demographics. Mountains, oceans and other natural features serve as unwitting allies in controlling movement and land use, and the Western Cape's status in the apartheid era as a 'Coloured labour preference area' led to unique three-way segregation between Coloureds, Blacks and Whites.<sup>2</sup>
6. Cape Town today exhibits an inverse densification. A largely poor and working class Coloured and Black majority live on the urban periphery, in very densely populated settlements, far from jobs, and with poor access to amenities and services.<sup>3</sup> Well-located central areas are dominated by middle class and affluent, predominantly White, households. These areas are characterised by relatively

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<sup>1</sup> City of Cape Town (2015). Built Environment Performance Plan. p. 19.

<sup>2</sup> Western Cape Government (2014). Western Cape Provincial Spatial Development Framework. p. 24.

<sup>3</sup> The Presidency, RSA (2006). National Spatial Development Perspective. p. 8 – 9; Western Cape Government (2014). Western Cape Provincial Spatial Development Framework. p. 24; City of Cape Town (2012). Spatial Development Framework. p. 20.

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low densities, and an acute shortage of affordable housing options despite excellent access to amenities, services and employment opportunities. This dislocation results in an unjust, inefficient and ultimately unsustainable segregated urban environment.<sup>4</sup>

7. Cape Town's economic centre is the central city, but it remains vastly less densified and diverse than it was fifty years ago. Over the past two decades government has failed to remedy this, by not meaningfully integrating Black and Coloured working class people into the central city. The rising costs of market-rate housing (rented or owned), and government failures to meaningfully encourage social and affordable housing in well-located areas (through radically up-scaled public provision or private regulation), have increasingly pushed poor, working and middle class families further away from economic and social centres. This sustains and advances the racial and class divides of apartheid.
8. Spatial segregation and associated patterns of sprawl impose a number of costs on the household, society, and the state, which become increasingly difficult to reverse over time.
9. Neighbourhoods of concentrated low-income households experience disproportionate levels of crime, poor educational outcomes, higher incarceration levels, and low levels of public health<sup>5</sup>. Despite greater need for government intervention in these areas, access to services and amenities tends to be

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<sup>4</sup> The Presidency, RSA (2006). National Spatial Development Framework. p. 8 – 9; Provincial Government Western Cape (2014). Western Cape Provincial Spatial Development Framework p. 29.

<sup>5</sup> Emily Badger, *The Atlantic* (2013). The Real Cost of Segregation – in 1 Big Chart.  
<http://www.theatlantic.com/magazine/archive/2013/09/the-real-cost-segregation/309440/>.

significantly worse here than in more affluent or mixed-income neighbourhoods.

10. The long-term financial costs imposed on the state through the creation of poverty traps in dislocated low-income neighbourhoods tend to be ignored when urban planning decisions are made. Too often, the focus remains on expediency, short-term gains and cost-savings.
11. Government's constitutional duty to progressively realize the right to physical housing structures cannot be divorced from its responsibility to advance spatial justice. Progressively addressing historic and ongoing spatial injustice requires effective, co-ordinated and integrated broad-based social and affordable housing programs, land use regulations, and spatial development strategies.

### **SPATIAL TRANSFORMATION LEGISLATION AND POLICY**

12. The enactment of the Spatial Planning and Land Use Management Act, 16 of 2013 ("SPLUMA") was a significant step in advancing spatial transformation. It focuses on a set of progressive development principles which must apply to spatial planning, development and land use management at all levels of government. This includes the principle of spatial justice which requires "that past spatial and other development imbalances must be redressed through improved access to and use of land".<sup>6</sup>
13. SPLUMA's impact on spatial transformation is dependent on the extent to which the development principles are translated into achievable, contextualised spatial outcomes and plans. The primary mechanism for achieving this is through

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<sup>6</sup> Government Gazette (2013). Spatial Planning and Land Use Management Act. Section 7(a)(i).

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forward planning documents, such as Spatial Development Frameworks (SDFs).

14. To the best of my knowledge, the Minister of Rural Development and Land Reform has not yet published a national spatial development framework, nor norms and standards for land use management and development, as he is obliged to do in terms of sections 13(1) and 8(1) respectively of SPLUMA.

15. The Western Cape Government (WCG) Provincial Spatial Development Framework (PSDF) is intended to align spatial plans, housing policies, environmental plans, and development strategies of national government, provincial departments, and municipalities. Its guiding principles include commitments to:

15.1. Spatial justice, noting that: *"Past spatial and other development imbalances should be redressed through improved access to and use of land by disadvantaged communities"* <sup>7</sup>

15.2. Sustainability and resilience, noting that: *"land development should be spatially compact, resource-frugal, compatible with cultural and scenic landscapes, and should not involve the conversion of high potential agricultural land or compromise ecosystems"*

15.3. Efficiency, noting that a focus should be on *"compaction as opposed to sprawl; mixed-use as opposed to mono-functional land uses; residential areas close to work opportunities as opposed to dormitory settlement; and promotion of public transport over car use"*

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<sup>7</sup> Western Cape Government (2014). Western Cape Provincial Spatial Development Framework. p. 22.

15.4. Accessibility, noting that a focus should be on: *"improving access to service, facilities and employment, and safe and efficient transport modes"*

15.5. Quality and Liveability with a focus on *"liveable settlements (that) balance individual and community facilities"*.

16. The PSDF makes several comments and prescriptions on future land use and affordable housing strategies. Of particular significance for the Tafelberg site, and other publicly owned well-located land parcels, are the following passages:

*"Exclusionary land markets mitigate against spatial integration of socio-economic groups and limit affordable housing on well-located land. At the same time, government sits on well-located underutilized land and buildings"*<sup>8</sup>

and:

*"Given the complexity and risks of changing current spatial patterns, the default position is to revert to business as usual. Politicians, the private sector, and spatial planners have different agendas and resultant timelines. Political decision making often contradicts stated spatial policies"*<sup>9</sup>

17. In addition to the PSDF, spatial development in the City is also informed by the City of Cape Town's 2012 Municipal Spatial Development Framework (CTSDF). It calls for the "transformation of the Apartheid City" by, amongst other things, "(where appropriate) using state-owned infill sites to help reconfigure the

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<sup>8</sup>Western Cape Government (2014). Western Cape Provincial Spatial Development Framework. p. 88.

<sup>9</sup>Western Cape Government (2014). Western Cape Provincial Spatial Development Framework. p. 29.

distribution of land uses and people".<sup>10</sup>

18. It further aspires to "increase low-income earners' access to affordable housing that is located close to the city's economic opportunities".<sup>11</sup> In addition to this, Policy 37 calls for public-private partnerships to accelerate integrated housing development. This requires the identification of "publicly owned land that can be used for housing projects, which will be executed in partnership with the private sector. Projects should provide for socio-economically integrated communities in a similar ratio of income distribution to the municipality as a whole"<sup>12</sup>.
19. The City routinely cites availability of land as one of the primary barriers to the expansion of affordable housing. It acknowledges that even if the delivery rate were to be drastically increased to 20 000 units per year, it would run out of land suited for housing development within five years. One of the main reasons cited by the City to explain land shortages is the large number of well-located sites regarded as well-suited for development, but not yet transferred to the City by other levels of government (including the WCG).<sup>13</sup>
20. The Provincial Rental Housing Strategy (2010 – 2014) further highlights how the lack of land availability is having a direct adverse impact on the ability to develop rental stock in the Western Cape:

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<sup>10</sup> City of Cape Town (2012). Spatial Development Framework. p. 70.

<sup>11</sup> City of Cape Town (2012). Spatial Development Framework. p. 70.

<sup>12</sup> City of Cape Town (2012). Spatial Development Framework. p. 71.

<sup>13</sup> City of Cape Town (2015). Built Environment Performance Plan. p. 37.

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*“In Cape Town and leader towns of the West Coast, Cape Wine lands, Overberg and Eden Districts, there are limited quantities of well-situated, state owned land suitable for formal state-funded rental housing”*<sup>14</sup>

21. In the absence of an overarching strategic plan dealing with the use of state land assets to meet the recommendations contained in the PSDF, decisions in respect thereof have pivoted largely on what the WCG commonly refers to as ‘urban regeneration’.

### **THE CENTRAL CITY/PROVINCIAL URBAN REGENERATION PROGRAMME AND THE TAFELBERG SITE**

22. In about 2010, the WCG’s Transport and Public Works Department initiated a Central City Regeneration Programme to decide on future uses of publicly owned land in and around the central city. One of the key stated objectives of the programme was to *“develop a percentage of the residential stock in identified precincts for affordable housing to ensure that poorer households get incorporated into the central city”*<sup>15</sup>. Internationally, these types of objectives and conditions are frequently imposed pursuant to legislative and other regulatory instruments to achieve spatial transformation and to further social and economic integration objectives.
23. Since its inception in 2010, the programme has evolved to form part of a larger Province-wide regeneration programme. According to a document entitled

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<sup>14</sup> Provincial Government of the Western Cape, Department of Human Settlements (2010). Building Sustainable Communities – Rental Housing Strategy 2010-2014. p. 8.

<sup>15</sup> Provincial Government of the Western Cape, Department of Transport and Public Works (2010). Cape Town Central City Regeneration Programme: Strategic Framework. p. 8.



'Provincial Regeneration Programme: Projects and Progress' (2012) the regeneration programme portfolio started off with six initial projects followed by a further 14 projects. The 16 projects located within the City constitute more than 5.6 million m<sup>2</sup> of bulk. This is an enormous property portfolio – roughly the size of 560 rugby fields – that, if used appropriately, would have a significant impact on addressing affordable housing shortages and spatial segregation in Cape Town.<sup>16</sup>

24. The first phase (or tranche) includes four properties, including the Tafelberg Site. The central location of the site, combined with the size of the property represents an immense opportunity to make the City centre more socially inclusive whilst assisting densification efforts.
25. Despite the strategic importance and high value of these four properties, there appears to be insufficient linkages between the Provincial Regeneration Programme and the priorities and strategies identified in the SDF, PSDF, and the BEPP. Decisions to sell land parcels under the Provincial Regeneration Programme appear to be ad-hoc and focused primarily on generating an immediate income stream for the WCG.
26. The outright sale of the Tafelberg site to a private investor clearly does not give effect to the provincial government's spatial planning and urban regeneration obligations and commitments. Sea Point has a diverse, cosmopolitan history. The Tafelberg site is extremely well suited to furthering diversity and social and

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<sup>16</sup> Western Cape Government, Department of Transport and Public Works (2012). Provincial Regeneration Programme: Projects and Progress. p. 1.

economic integration.

Susan Marion Parnell

SUSAN MARION PARNELL

The Deponent has acknowledged to me that she knows and understands the contents of this affidavit, which affidavit was signed and sworn to or before me at Hout Bay on this 09 day of April 2016 the regulations contained in Government Notice No. R1258 of 21 July 1972, having been complied with.

Phumlaneni Mlateni

Phumlaneni Mlateni  
COMMISSIONER OF OATHS

PHILIPSBURG  
STABIEBEVELVOERDER  
HOUTBAAI  
2016 -04- 09  
STATION COMMANDER  
HOUT BAY  
SOUTH AFRICAN POLICE SERVICE

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