

"TA23"

NDIFUNA
UKWAZI

c/o: mandisa@nu.org.za
Our ref: NU/FSWCP.1
4 February 2016

To: Premier Helen Zille
Premier of the Western Cape Province
By email:
Premier.Premier@westerncape.gov.za

and to: Minister Donald Grant
MEC for Transport and Public Works,
Western Cape Province
By email:
Donald.Grant@westerncape.gov.za

Copies to:
The Honourable Minister Pravin Gordhan
Minister of Finance,
National Treasury
By email: blessing.sokhulu@treasury.gov.za

Minister Bonginkosi Madikizela
MEC for Human Settlements,
Western Cape Province
By email:
Bonginkosi.Madikizela@westerncape.gov.za

Alderman Patricia de Lille
Mayor of the City of Cape Town
By email:
mayor.mayor@capetown.gov.za

Mrs Catherine Stone
Director, Spatial Planning and Urban Design
City of Cape Town
By email: Catherine.Stone@capetown.gov.za

Dear Premier Zille and Minister Grant,

RE: DISPOSAL AND DEVELOPMENT OF ALFRED STREET COMPLEX; HELEN BOWDEN NURSES HOME; TOP YARD AND THE TAFELBERG REMEDIAL SCHOOL - CAUTION ON TRANSFER AND REQUEST FOR INFORMATION

1. Ndifuna Ukwazi ("NU") is a non-profit organisation and legal clinic that works to promote the realisation of Constitutional rights and social justice. NU's core mission is to advance urban

Ndifuna Ukwazi is a not-for-profit trust (IT 540 - 2001)(NPO 024 - 737).

Board of Trustees: Shuaib Manjra (Chairperson), Doron Isaac,
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land justice and access to well-located affordable housing in the City of Cape Town through providing legal, advocacy and related support to communities and social movements.

2. We write to you regarding the following four immovable properties, owned by the Western Cape Provincial Government and located in the City of Cape Town ("the City"), that have been made available for sale and/or lease to the private sector:

2.1. The Alfred Street Complex, situated on Erf No. 564, bordered by Prestwich, Chiappini, Hospital and Alfred Streets, Cape Town ("Alfred Street Complex");

2.2. The Helen Bowden Nurses Home, located on future portion 1, remainder of Erf 1559, Green Point, on the corner of Granger Bay Boulevard and Beach Road, Cape Town ("Helen Bowden Nurses Home");

2.3. Top Yard, Erf No. 96174, located at 95 Hope Street, Gardens, Cape Town ("Top Yard"); and

2.4. The former Tafelberg Remedial High School, consisting of two separate erven 1424 and 1675, 335 Main Road, Sea Point ("Tafelberg Property"),

collectively, "the Four Sites".

3. In March 2014, the Western Cape Provincial Government announced that the Provincial Department of Transport and Public Works ("the Department") has "identified four potentially lucrative properties in the CBD as investment opportunities," namely, the Four Sites and advertised these for development by the private sector.

4. On 26 January 2016, a news article reported that the Tafelberg Property has been sold by the Department to the Phyllis Jowell Jewish Day School.¹

5. In this letter, we make representations against the Department's decision to sell and/or lease each of the Four Sites to private investors and developers. We further write to request information relating to the sale and/or lease and development of each of the Four Sites.

Background

6. Between April and June 2014, NU, the Social Justice Coalition ("SJC") and Equal Education ("EE") exchanged correspondence with the Department following the notice of disposal of the above described Four Sites.²

¹ See Nicole McCain, *New school at Tafelberg*, Eye Witness News, 26 January 2016. Available at <http://m.news24.com/news24/SouthAfrica/Local/Peoples-Post/new-school-at-tafelberg-20160125>.

² All previous correspondence is attached for your ease of reference.

- 6.1. On 17 April 2014, NU, the SJC and EE made a joint submission to then Minister of Transport and Public Works, Mr Robin Carlisle, objecting to the proposed disposal of the Four Sites to private developers on the basis that these properties should be developed for mixed income housing, particularly in the context of the shortage of suitable, well-located state owned land available for public housing in the City. Minister Carlisle responded telephonically to Mr Dustin Kramer, the Deputy General-Secretary of the SJC. A written record of that conversation was attached to a further letter to the Department from Mr Kramer, dated 11 June 2014.
- 6.2. On 11 June 2014, the current Minister of Transport and Public Works, Mr Donald Grant responded Mr Kramer's letter. He acknowledged the "severe shortage of available housing in the Metro" in relation to the provision of adequate housing by government and further advised that "the department believes it is going about its business in a responsible manner and that [its] decision and actions with regard to these properties, based on considerations of policy, are not unconstitutional...".
- 6.3. In the same letter, Minister Grant also noted that "the developments that our design teams and researchers suggest for these properties correspond with the feedback the department obtained from the Investors Conference".
7. More recently, on 26 January 2016, the Department's spokesperson- Mr Byron la Hoe, confirmed that the Tafelberg Property was declared as surplus and that this justified the sale of the Tafelberg Property. While we are not aware of the basis for the disposal of the remaining three properties, we would assume that because the properties were advertised in the same process, that they too were declared as surplus. The Department is requested to confirm whether such a declaration was in fact made in respect of the Alfred Complex, Helen Bowden Nurses Home and Top Yard properties.

Declaration of any or all of the Four Sites Properties as "surplus"

8. We object to the Department's declaration of the Four Sites as surplus, and consequent disposal of these properties on this basis. According to the Government Immovable Asset Management Act, 19 of 2007 ("GIAMA") "surplus" in relation to an immovable asset owned by government, means that the immovable asset no longer supports the service delivery objectives of, in this instance, the Western Cape Provincial Government.
9. Section 5(1)(a) of the GIAMA requires that all immovable assets must be used "efficiently to support service delivery objectives" and that an immovable asset only becomes "surplus" if it "does not support its service delivery objectives at an efficient level and if it cannot be upgraded to that level".
10. As noted above, an initial objection to the disposal of the Four Sites to the private sector, as stated in the joint submission of 17 April 2014, is that there is a shortage of well located,

suitable and available land for housing provision, land redistribution, service delivery and urban densification, among other urgent socio-economic and developmental objectives. This much has been confirmed by both the City of Cape Town and the Provincial Government.³ We argue that the declaration of any, or all of the Four Sites as "surplus" is therefore unreasonable in light of the acknowledged service delivery needs and backlogs and the *prima facie* potential of the Four Sites, as provincially owned properties to support housing or further service delivery objectives.

11. Regrettably, the public is not privy to the Department's feasibility studies or its interaction with investors. We accordingly request that the Department provide a written explanation detailing the basis upon which the Tafelberg Property, and to the extent applicable, the remaining sites were declared as "surplus", together with an analysis of the information that informed the Department's decision to dispose of the properties as surplus immovable assets.

Consideration of public housing as an alternative use for the Four Sites

12. In the case of disposals, the GIAMA also obliges the Provincial Government to first consider whether the immovable asset in question can be used by another national or provincial department, or for another social development or socio-economic purpose. In terms of section 5(1)(f), the social development initiatives and socio-economic objectives of the government *must* be considered. The latter includes "land reform; black economic empowerment; alleviation of poverty; job creation; and the redistribution of wealth."
13. Furthermore, the Western Cape Provincial Spatial Development Framework, 2014 (PSDF) requires the Province to consider housing delivery needs and objectives, including where the disposal of publicly owned land is proposed. To that end, Policy S5 of the PSDF provides for the following policies that must guide planning, project prioritisation, budgeting and performance management at a provincial scale:

"Policy S5: Promote Sustainable Integrated and Inclusive Housing in Formal and Informal Markets

...

11. *Achieve a wider range of housing opportunities with regards to diversity of tenure, size, density, height and quality in order to promote a ladder of upward mobility for households to progress as economic circumstances change over time.*
12. *Identify, allocate, release and package strategic land parcels for all forms of state funded rental projects, prioritizing the rental market for households with monthly incomes of between R1500 and R7000.*

³ See for example Mayor Patricia De Lille's open letter, dated 6 February 2014, to President Jacob Zuma, in terms of which, a request was made for "urgent" assistance from National Government for the purposes of housing provision. More recently, in its 2014/2015 annual report, the Provincial Department of Human Settlements identified the "scarcity of well-located and suitable land for housing" as a "generic constraint" preventing the Department from achieving its housing delivery targets. (Annual Report available online at <https://www.westerncape.gov.za/sites/www.westerncape.gov.za/files/hshumansettlements-annualreport-2014-2015.pdf>, see page 33).

13. *Strengthen the role of municipalities to manage public intervention in urban land development processes.*
14. *Acknowledge the social value of land and develop investment and land management tools that evaluate development so that the societal value of land is prioritised in relation to land claims or benefits.*
15. *Proactively plan, align and coordinate the strategic use and disposal of public land to ensure that opportunities for its use for public housing are not lost.* (our emphasis)

14. The Housing Act, 107 of 1997 ("Housing Act") similarly places an obligation on the Provincial Government to "give priority to the needs of the poor in respect of housing development" and to ensure that housing development "provides as wide a choice of housing and tenure opportunities as is reasonably possible; is economically, fiscally, socially and financially affordable and sustainable; and is based on integrated development planning."⁴ Importantly, provincial government is required to promote "higher density in respect of housing development to ensure the economical utilisation of land and services."

15. The provisions of the GIAMA and the PSDF read with the Housing Act are clear in establishing preconditions for the disposal of public land, especially where such land has the potential to create well-located and sustainable opportunities for public housing developments.

16. The 2011 Census recorded that the "housing need" in the City of Cape Town stood at 373 641 households in 2011.⁵ By 2030, the City estimates that the housing need will grow to more than 650 000 households if the current delivery of 6 100 new housing opportunities per annum is maintained. Housing delivery would therefore need to expand to approximately 30 000 opportunities per year to meet existing and future demand.

17. In the context of the housing backlog, section 5(1)(f) of the GIAMA would require that suitable and affordable housing programmes must be considered as necessary alternative uses of public land, over and above proposed uses by the private sector. The sale of the Tafelberg Property, and the proposed disposals of the Alfred Street Complex, Helen Bowden Nurses Home and Top Yard to the private sector, in the context of the City's current housing crisis, suggest that the provisions of the GIAMA and the PSDF were disregarded or otherwise not complied with.

18. We accordingly request that the Department provide the following:

- 18.1. A feasibility assessment, or similar document, demonstrating the Department's consideration of an alternative public user or alternative social developmental and/or socio-economic purpose in respect of each of the Four Sites, as contemplated in section 5(1)(f) of the GIAMA;

⁴ Sections 2(1)(a) and (c) of the Housing Act.

⁵ See City of Cape Town, Built Environment Performance Plan - hrjg2015/ 2016 review, page 33. Available at: http://www.capetown.gov.za/en/Housing/Documents/CCT_BEPP_2015_16_June.pdf.

18.2. Any further submissions, feasibility assessments or documentation, whether from the Provincial Government, the City or third parties, in terms of which public housing was proposed in respect of each of the Four Sites; and

18.3. The final decisions taken in respect of the disposal of each of the Four Sites, and the reasons for those decisions. In the event that a final decision has not been made in respect of any of the properties, the Department is requested to provide a full account of the current status of the Site in question, including any written proposals or submissions concerning the sites, or any agreements that the Western Cape Government may have entered into in relation to these properties.

Western Cape Government's obligation to redress past spatial imbalances through ensuring equity in land use

19. The continuing patterns of unequal land ownership and use in the areas where the Four Sites are located (the Cape Town CBD, Green Point and Sea Point) are inconsistent with the land reform and land use objectives of both national and provincial government. The disposal of each of the Four Sites by the Provincial Government to the private sector for private interests further perpetuates that inequality and, on the face of it, is also inconsistent with is in conflict with the principles for spatial planning, land development and land use management contained in the Spatial Planning and Land Use Management Act, 16 of 2013 ("SPLUMA") and the Western Cape Land Administration Act, 3 of 2014 ("LUPA").

20. The principle of "spatial justice" set out in section 7(a) of SPLUMA requires that past spatial imbalances must be redressed through improved access to, and use of land. The principle of "spatial sustainability" also obliges to the Province to "consider all current and future costs to all parties for the provision of infrastructure and social services in land development", and to promote land development in locations that are sustainable and limit urban sprawl.

21. With regard to spatial sustainability, section 59(2)(g) of LUPA adds that "development should be principle-driven and should prioritise long-term social, economic and environmental benefits over short-term benefits".

22. Read together, both SPLUMA and LUPA support a long-term approach to land use and development towards correcting "historically distorted spatial patterns of settlement,"⁶ rather than a short-term approach premised on the potential economic value of the land. The development of strategically located public land that is informed by the spatial justice and spatial sustainability principles would at the least require that Black people, particularly African, Coloured and Indian working- and middle-class residents are afforded access to, and use of the land through, for example, mixed-income and mixed-use housing developments. Furthermore, a key element of spatial sustainability is to limit urban sprawl

⁶ See section 59(3)(b)(vi) of LUPA.

through the development of well-located land in areas such as those where the Four Sites are located, namely, the Cape Town CBD, Green Point and Sea Point.

23. Importantly, the abovementioned PSDF compiled in terms of section 4 of the LUPA identifies "spatial inertia" as a threat to spatial transformation. In this regard, the PSDF recognises that "systemic change will take generations to manifest itself on the ground, but decisions taken now will influence whether these changes do or do not come about in future."

24. Based on the information available to us, it is evident that the disposal of the Four Sites to the private sector in spite of the Province's obligations to address spatial inequality and ensure spatial transformation, is inconsistent with SPLUMA, LUPA and the PSDF.

Conclusion

25. We trust that the Premier and Minister Grant will appreciate the public interest in ensuring that publicly owned land is utilised and developed in a way that prioritises the societal value of the land. In light of these legal obligations and the above described housing crisis in the City of Cape Town, we caution the Department against any disposal and transfer that does not address the need for mixed-use and mixed-income housing on the Four Sites.

26. In summary, we request that the following records and information requested in this letter be provided in the spirit of transparency and accountability:

26.1. Confirmation of whether the Alfred Complex, Helen Bowden Nurses Home and Top Yard properties have been declared as "surplus" (see paragraph 7);

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26.2. The basis upon which the Tafelberg Property, and to the extent applicable, the remaining three sites were declared as "surplus" (see paragraph 11);

26.3. A feasibility assessment, or similar document, demonstrating the Department's consideration of alternative public users or alternative social developmental and/or socio-economic purpose in respect of each of the Four Sites (see paragraph 18.1);

26.4. Any further submissions, feasibility assessments or documentation, whether from the Provincial Government, the City or third parties, in terms of which public housing was proposed in respect of each of the Four Sites (see paragraph 18.2); and

26.5. The final decisions taken in respect of the disposal of each of the Four Sites, and the reasons for those decisions (see paragraph 18.3).

27. We further request that the Premier and Minister Grant acknowledge receipt of this letter and provide the information requested in the following way:

27.1. In relation to information on the current status of the Four Sites, as listed in paragraphs 18.3 and 26.5, we request your urgent response before the close of business on 11 February 2016; and

27.2. We request that all the other information and/or records be provided by the close of business on 18 February 2016.

28. Finally, in line with the caution of transfer, we request that a copy of this letter be sent to each party that has expressed, or may have acquired, an interest in the disposal and development of any of the Four Sites.

Yours faithfully,

Ndifuna Ukwazi



Per: MANDISA SHANDU

Deputy Director