

"TAFS"

NDIFUNA
UKWAZI

c/o: mandisa@nu.org.za
18 March 2016

To: **Minister Bonginkosi Madikizela**
MEC for Human Settlements,
Western Cape Provincial Government
By email:
Bonginkosi.Madikizela@westerncape.gov.za

Copy to: **Mr Willem Steenkamp**
Advisor to the MEC for Human Settlements,
Western Cape Provincial Government
By email:
willem.steenkamp@westerncape.gov.za

Dear Minister Madikizela,

**RE: DISPOSAL OF THE LAND ON WHICH THE FORMER TAFELBERG REMEDIAL
SCHOOL AND OTHER PROPERTIES WERE SITUATED**

Background

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 land justice in the City of Cape Town through providing legal, advocacy and related support to communities and social movements. Our primary campaign focusses on

Ndifuna Ukwazi is a not-for-profit trust (IT 540 - 2001)(NPO 094 - 737).

Board of Trustees: Shuaib Manjra (Chairperson), Doron Isaacs,
Phumeza Mlungwana, Michelle Adler, and Zackie Achmat

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creating a more integrated Cape Town, through the expansion and protection of affordable mixed-income housing in well-located areas across the City.

2. We write to you regarding the disposal by the Western Cape Provincial Government ("**Province**") of the land (erven 1424 and 1675), on which the former Tafelberg Remedial School and other properties, including public rental stock - Wynyard Mansions, were situated ("**Tafelberg Property**").
3. At the end of January 2016, we learnt that the Western Cape Provincial Department of Transport and Public Works ("**the DTPW**") had concluded an agreement of sale, in respect of the Tafelberg Property with, or for the benefit of, the Phyllis Jowell Jewish Day School ("**PJJDS**"). The property was sold by the DTPW to the PJJDS at a purchase price of R135 million.
4. The sale is of concern to us and our clients, as it appears that the Province, in concluding the sale agreement, has failed to accord due priority to its legal and moral obligations to use publicly owned land in the interests of furthering its socio-economic objectives.
5. NU has raised objections to the sale of the Tafelberg Property directly with the Province, specifically with the DTPW in its capacity as custodian of the property. It appears that the DTPW's decision to declare the Tafelberg Property "surplus", and to agree to sell the property to, or for the benefit of, the PJJDS on that basis, is inconsistent with the relevant housing, spatial planning, asset and land use management laws and policy.
6. The legal bases for considering that the Province's conduct was unlawful are set out in NU's correspondence to the Province of 4 February 2016, a copy of which was previously circulated to you and is enclosed for your information.
7. In this letter, we write to you to request certain information relating to interdepartmental consultations and/or submissions, either co-ordinated by the DTPW or made by your Department of Human Settlements ("**DHS**") regarding the disposal of the Tafelberg Property, as required by the legislative and policy framework described below.

Legal obligations & interdepartmental consultation

8. On 15 March 2016, the MEC for Transport and Public Works, Minister Donald Grant made the following statement in a Cape Talk interview with John Maytham regarding the disposal of the Tafelberg Property and the legal steps taken by his department in this regard:

"There are many legal steps we need to go through in terms of the Western Cape Land Administration Act and GIAMA etc. But part of the process is that we as government look at all

the parcels of land that are going to likely to be surplus to our needs, um, from the short-term through to the long-term. But all property is normally offered firstly to government. In other words, my department would put out that we are going to dispose of property X and then relevant government departments can put their hands up."¹ (emphasis added)

9. Further to the laws referred to by MEC Grant, we draw your attention to the following legislation and policy describing the Province's specific obligations concerning the disposal of state owned land:
 - 9.1. Government Immovable Asset Management Act, 19 of 2007 ("GIAMA");
 - 9.2. Housing Act, 107 of 1997 ("Housing Act"); and
 - 9.3. Western Cape Provincial Spatial Development Framework, March 2014 ("PSDF").
10. As mentioned above, the DTPW declared the Tafelberg Property as "surplus", thus justifying the sale of the property to a private party. The GIAMA defines "surplus" in relation to an immovable asset owned by government, as one that no longer supports the service delivery objectives of, in this instance, the Western Cape Provincial Government.
11. 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".
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. In terms of the Housing Act, the Provincial Government, through the DHS is mandated to, *inter alia*, "do everything in its power to facilitate the provision of adequate housing." The PSDF more specifically obliges the Provincial Government to:

"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." (emphasis added)

¹ Cape Talk Radio Interview, John Maytham with MEC Grant, "How does WC government make decisions on the disposal of vacant property?", 15 March 2016. Available: <http://www.capetalk.co.za/index.php/articles/12239/how-does-wc-government-make-decision-on-the-disposal-of-vacant-property>.

Stated need for public land to meet housing and spatial planning objectives

14. NU's repeated objections to the sale of the Tafelberg Property to the private sector are raised in the context of the 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 in the City of Cape Town. This much has been confirmed by both the City of Cape Town and the Provincial Government.²

15. On 16 March 2016, Advisor to Provincial MEC for Human Settlements, Mr Willem Steenkamp again confirmed this at an event hosted by the organisation, Future Cape Town. In response to a question raised by an NU representative, Mr Steenkamp said the following regarding the sale of the Tafelberg Property:

"There's property which you [NU] are concerned about which is going to be sold which will be potentially developed into something that normal people can't afford, and I'm just as concerned about that as you. Because the city must be accessible to people that work here, not just accessible to the wealthy

...

It would be foolish to make our land available for expensive developments if we've got an incredibly dire need for normal people - and I mean normal people, working class people - that cannot afford to live in the city and we exclude them."

16. Mr Steenkamp also cited the proposed Conradie re-development and the Better Living Model as "a strong attempt" by the Province to promote mixed-income housing in the province. In light of DHS's commitment to using "strategically located land" to advance integrated housing in the City of Cape Town, one would assume that other parcels of well-located provincially owned land - such as the Tafelberg Property - would be equally considered for similar developments.

17. We understand that prior to the notice of disposal to the private sector, the National Association of Social Housing Organisations ("NASHO") proposed that the Tafelberg Property remain in public ownership for the purposes of providing affordable housing, as contemplated by Mr Steenkamp.

² 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/hs-humansettlements-annualreport-2014-2015.pdf>, see page 33).

18. In August 2012, this potential for affordable housing on the Tafelberg Property was presented by NASHO in a workshop held in Cape Town on Social Housing and Urban Regeneration. The key attendees included the Advisor to the Western Cape MEC for Transport and Public Works (Mr Frank Cummings), the City of Cape Town Human Settlements Department (including the City's then Director of Human Settlements, Mr Seth Maqetuka), three Social Housing Institutions, the Cape Town Partnership and NGOs. The participants at this workshop recommended that the site be used "as a mixed tenure and income residential development that can partly respond to the need for affordable social housing alongside other uses for the site."
19. The NASHO report on Social Housing further records that NASHO, working with other stakeholders and with finance from the Social Housing Regulatory Authority, had already completed a feasibility plan for the use of the site for social housing before calls for proposals were made to the private sector.
20. To that end, NASHO's feasibility report found that the Tafelberg Property, if used as a mixed use, mixed tenure social housing development could potentially yield at least 204 residential units (comprising 32 bachelor units, 66 one bedroomed units and 106 two bedroomed units).
21. We also understand, and note with concern, that prior to this sale, a portion of the Tafelberg Property (erf 1424) consisting of the affordable rental stock flats, Wynyard Mansions, had been allocated to the DHS for administration, development and management. The disposal of well-located land previously used for affordable housing is a *prima facie* regressive measure and inconsistent with established constitutional and housing jurisprudence.

Conclusion and request for information

22. In light of the above described legislative framework, the DHS' previous allocation of a portion of the Property for development, and MEC Grant and Mr Steenkamp's recent public statements, we request that the Department of Human Settlements provide the following information in the spirit of transparency and accountability:
- 22.1. Whether the DHS submitted a proposal or similar representation to utilise and/or develop the Tafelberg Property to facilitate the provision of adequate housing?
- 22.2. If not, why not?

22.3. And if so, how was a decision taken to prioritise a sale to raise revenue over the obligation to use well-located public land for affordable housing and ensure that opportunities for its use for public housing are not lost, and more specifically as set out in the PSDF and the Housing Act?

23. Given the ongoing contestation of the sale of the Tafelberg Property, the Provincial DTPW has given NU an undertaking that it will not proceed with the registration of transfer of the Tafelberg Property within the next 26 days. We accordingly request that this information and supporting documents, where appropriate, be provided by close of business on 24 March 2016.

24. Please note that a similarly worded letters have been directed to the National Department of Human Settlements and the City of Cape Town Human Settlements Directorate requesting similar, relevant information.

Please urgently acknowledge receipt hereof.

Yours faithfully,

Ndifuna Ukwazi Law Centre



Per: MANDISA SHANDU
Deputy Director / Attorney

Enclosed:

1. Ndifuna Ukwazi letter to Premier Helen Zille and Minister Donald Grant, 4 February 2016.