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

Case No. _____

In the matter between:

THOZAMA ANGELA ADONISI
AND OTHERS

First Applicant

and

MINISTER FOR TRANSPORT AND PUBLIC WORKS:
WESTERN CAPE
AND OTHERS

First Respondent

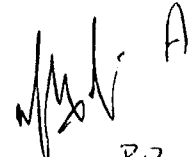
SUPPORTING AFFIDAVIT OF MALCOLM McCARTHY

I, the undersigned,

MALCOLM McCARTHY

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

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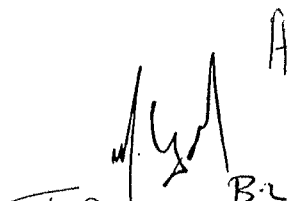
others, I believe that such information is true and correct.

2. The purpose of this affidavit is to describe social housing in South Africa and the status and challenges of social housing provision in Cape Town, with reference to my practical experience and engagement with relevant governmental bodies on the Tafelberg site, and similarly situated sites in the inner-city, in so far as this relates to the issues raised in the application.
3. I am currently the General Manager of the National Association of Social Housing Organisations ("NASHO"). NASHO is a federation of 20 Social Housing Institutions ("SHIs") responsible for the development and management of 24 000 social housing units and linked tenancies, mainly in the major urban centres of South Africa. I present this affidavit in my personal capacity.
4. I have a BA (Social Work) from the University of Witwatersrand (1975). My curriculum vitae is attached as "MM1" and should be read as specifically incorporated into this affidavit. I have had 30 years of experience in all aspects of social and public rental housing both in South Africa and England.
5. In South Africa I have done extensive work on the government's rental housing programmes for national, provincial and local government, as well as for a number of SHI's. I was responsible for the structuring of the City of Cape Town ("*the City*")'s social housing programme. I have undertaken extensive work in the field of Social Housing and Urban Regeneration involving work with both metropolitan municipalities and SHIs in the identification of land opportunities for social housing

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as a catalyst for urban regeneration.

6. I have managed and undertaken various research projects on social and rental housing in South Africa. I have also served as a regular guest lecturer at the University of Cape Town's City and Regional Planning programme, where I present to Masters students on social housing. In addition, I have done extensive work as a consultant on the roll out of the National Integrated Development Planning system in South Africa as well as the linkage of this to the National Spatial Planning framework.
7. As the General Manager of NASHO, I was personally involved in discussions between SHI's, the Social Housing Regulatory Authority established under the Social Housing Act, 16 of 2008 ("*the SHRA*" and "*the Social Housing Act*"), the Western Cape Provincial Government and the City on plans to decide on the future use of the Tafelberg site (also known as the Sea Point Main Road Precinct). These discussions took place between 2011 and 2013.
8. The affidavit is structured as follows:
 - 8.1. First, I provide a basic overview of social housing in South Africa, an overview of the legislative and policy framework;
 - 8.2. Second, I describe the roll out of social housing in the Western Cape, and in Cape Town in particular;
 - 8.3. Third, I describe the Tafelberg site as an opportunity for social housing; and

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8.4. Finally, I set out my conclusions.

OVERVIEW OF SOCIAL HOUSING IN SOUTH AFRICA

9. The government has a number of different housing programmes with defined policies and subsidy systems. The most pertinent to the development of rental stock are the Community Residential Unit Programme ("CRU") and the Social Housing Programme.
10. Social Housing in South Africa is governed by the Social Housing Act of 2008, and the regulations issued thereunder, including the Social Housing Regulations ("*the Social Housing Programme*"). It is a legislative programme of subsidised rental housing provision for low and moderate income households, intended to give such households access to the socio-economic resources of South Africa's cities.
11. It is intended as an instrument to help restructure South African cities to ensure greater social, economic and racial integration within more compact residential areas. It expressly provides that, in giving priority to the needs of low and medium income households in respect of social housing development, all three spheres of government must, amongst other aspects, promote social, physical, and economic integration of housing development into existing urban and inner-city areas through the creation of quality living environments. It is by no means a standalone solution to South Africa's housing crisis, but an important component of overarching housing policy.
12. The Social Housing Act establishes the SHRA to regulate the sector, and to assess

and distribute the Restructuring Capital Subsidy ("RCS") made available to subsidise part of the capital costs of development. This subsidy serves to reduce rental costs to make Social Housing units affordable to households in the monthly income range of R2 400 to R 7 500. Households within this band fall into a "gap", in that they fail to qualify for a government RDP/Breaking New Ground home, but also struggle to afford rental at market rates. Social Housing rents tend to range from R900 – R2200 per month per household at the point of entry.

13. The SHRA is also responsible for the regulation of the non-profit SHIs tasked with responsibility to facilitate construction and undertake the long term management of the housing stock. The legislation also regulates the roles and responsibilities of the three spheres of government in the making of policy, monitoring delivery, providing both capital grants and institutional development financing. It emphasises the responsibility of the different spheres of government in allocating land and buildings to ensure that the programme achieves its objectives.
14. It also targets the expenditure of the government capital investment in defined 'Restructuring Municipalities' and within these municipalities in agreed 'Restructuring Zones'. The Social Housing Act specifically refers to the programme as an instrument to assist with urban restructuring and urban regeneration. This spatial targeting is intended to ensure that government investment is made in spatial areas where it is possible to achieve the integration and redistributive intent of the programme, and avoid perpetuating development of low-income housing on the periphery of cities.

15. Prior to the implementation of the 2008 Social Housing Act, there were initial attempts to develop some social housing using the Provincial Government's Institutional Subsidy programme and an estimated 16 000 units were completed nationally. However, the grant financing was insufficient for viable projects and the controls on investment and the long term management and control of the stock were inadequate.
16. There are now an estimated 30 000 social housing units nationally under management by SHI's, mainly in the metros and major cities. From the introduction of the Social Housing Act up until 2015, the government has allocated 20 615 RCG subsidies nationally. There are a total of 22 SHI's with units under management, 9 of these have over 1500 units making them viable businesses. A few have started making re-investment in new social housing developments through the leveraging of their portfolios and their equity base.
17. The stated national government intent is for the expansion of the programme, both because of its provision of housing for low and moderate income households in better parts of cities, but also because of the good quality and long term management of the stock and the fact that rental housing units can give a number of different households access over the life of the units. It is presently estimated that, on average, one unit will serve 7 households during the 20 year lifecycle of the unit. The Minister of Human Settlements has set a target for the delivery of 27 000 additional units during the period 2014 - 2018.
18. Although the programme has a strong legislative and regulatory framework some


issues have affected the speed and level of delivery. These have included:

- 18.1. difficulties in accessing the right land, at the right price and in the right location. This is in part a consequence of resistance from government to releasing land for the programme;
 - 18.2. lack of strong integration of the programme investment into broader government programmes e.g. urban regeneration, transport corridors. This would help increase the impact of the government investment;
 - 18.3. the spatial drift in the allocation of subsidies from inner-city and suburbs immediately surrounding the inner-cities, to outer suburbs and the grey zones between the former 'white' areas and the former black townships. This is primarily as a result of the difficulty of accessing the right land, at the right price, in the right location.
19. After recent substantial reviews of the Social Housing Programme by both the Department of Performance Management and Evaluation in the Presidency and the National Treasury, a number of initiatives are now in place to tackle some of these constraints. However, the future success of the Social Housing Programme remains in part dependant on the willingness of government to release well-located public land.
20. The CRU programme is specifically targeted at existing government owned housing stock and the development of new stock on government owned land. It is targeted at households on income bands between R800 – R3 500. The projects must

remain in the ownership of the sphere of government developing the stock. This programme does not have any stated urban integration or restructuring intent. A recent evaluation of this programme for National Government has shown that large amounts of capital investment in this programme were spent in the former black township areas. In addition the municipalities with this stock are providing, explicitly or implicitly, substantial additional operational subsidies.

SOCIAL HOUSING DELIVERY IN CAPE TOWN – POSSIBILITIES AND LIMITATIONS

21. The City is a designated 'Restructuring Municipality' and has designated 'provisional restructuring zones' in terms of the Social Housing Programme.
22. The inner-City, Salt River/Woodstock and Observatory areas are currently designated Restructuring Zones. The Restructuring Zone Policy makes it possible for a municipality to extend or amend its restructuring zones through a process that involves a council resolution, confirmed by the Provincial MEC of Human Settlements and National Minister of Human Settlements. There are examples of this having been done elsewhere, including in Tshwane. In my view, Sea Point would meet all the criteria for a restructuring zone as defined in the policy.
23. The City has had a formal Social Housing programme since 2004 when it developed a 'smart' partnership approach to building a long term relationship between the municipality and the SHI delivery agents. This arrangement involved the City entering into 5 year partnerships with SHIs who applied through an open tender process. The assessment was based on the demonstrated ability of the SHI

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to 'facilitate the development' and 'undertake the long term management of the stock and linked tenancies'. Once a partnership agreement was signed the City would provide the SHI with access to land and/or buildings on a project-by-project basis.

24. For each project, there was an agreement between the City and the SHI on the basis for development and allocation. The land and building was then usually held on a long term leasehold basis by the SHI as a way of giving the municipality the power to ensure the SHI adhered to the terms of its agreement without having to control the daily running of the SHIs business. Initially 2 SHIs were appointed as partners – the Social Housing Development Company (SOHCO) and the Cape Town Housing Company. Subsequently Communicare was added as a partner, and now the City has five partners.
25. At the same time that the partnership arrangement was established in 2004, the City also identified and agreed to allocate a number of sites in various well located areas for social housing. These sites formed part of the 'Restructuring Zones' once the Social Housing Programme was implemented in Cape Town.
26. The implementation of the programme in Cape Town has been slow, in spite of considerable demand from potential residents, and clear intent by many officials within the City and Province's Housing departments to expand more rapidly. There are, according to the NASHO records, presently 4 485 Social Housing units under management in the City. About 3 000 are units owned and managed by Communicare that were developed prior to 1994. This means that since the

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introduction of the RCG in 2008, a total of 1 485 units have been developed.

27. Of these, 1 019 are in inner-suburb areas close to major public transport nodes and within very easy access of important socio economic nodes of the City, while the rest are in outer-suburb and grey zone areas. These are the Drommedaris Project, Bothasig Projects (Communicare), Steenvillas (SOHCO) and Scottesdene (Madulamoho Housing Association).
28. Unlike in Johannesburg, none of the developments undertaken in terms of the Social Housing Programme in Cape Town (save for the recent project in Woodstock described below) were undertaken in the inner-city or near inner-city sites. Such sites have remained inaccessible to low and moderate income households.
29. A significant reason for this failure to implement the Social Housing Programme in Cape Town's inner-city and surrounds can be attributed to how government in the Western Cape has conceived and implemented its "urban regeneration" objective.
30. From the late 1990's the approach to urban regeneration spearheaded by the City, the Western Cape Provincial Government, and the Cape Town Partnership was to encourage investment for middle and higher-end commercial and residential rental and sectional title purposes, including new developments and refurbishing of existing buildings. Some urban analysts have pointed out that this approach, while highly successful in generating investment, has tended to force lower income households out of the centre of the city and has not provided new housing opportunities for those wanting to live closer to the CBD. This has also resulted in a

developed inner-city where residential accommodation is only affordable to households in the top 20 per cent of South African income earners.

31. During this period of substantial regeneration, neither the City nor the Province allocated land or buildings in the inner-city and surrounds for Social Housing, save that the City formally made 4 sites available in the Salt River/Woodstock area and is presently providing support to the SHIs responsible for developing these sites. However, these are expected to yield a maximum of 1260 units. That is not sufficient to achieve the necessary spatial restructuring impact implicit in the Social Housing Programme.

32. The City has an estimated 70 000 existing CRU units, including hostel rooms, most of which were developed before 1994. These are predominantly in the less well located former 'coloured' and 'african' apartheid townships. Historically there have been major problems with the management of this stock with resulting low payment levels and poor repair programmes. In general, the CRU stock, while providing shelter, is not contributing to the spatial integration of the City, nor in shifting the access of poor and moderate income households to the socio-economic resources of the City.

THE TAFELBERG PROPERTY - AN OPPORTUNITY FOR SOCIAL HOUSING / AFFORDABLE HOUSING

33. In 2011 the Western Cape Department of Transport and Public Works ("DTPW") announced its intention to release a number of well-located sites (including the

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Tafelberg site) and buildings in the inner-city and surrounds to support the implementation of its Urban Regeneration Strategy. At the time I, together with an associated group of stakeholders involved in the sector, examined the urban regeneration strategy and calls for expressions of interest in the sites they intended to release in the first round.

34. Through NASHO and the SHIs in Cape Town, it was pointed out to DTPW that the conditions in the calls for expressions of interest would not make it possible to achieve the residential integration defined as one of the objectives of the urban regeneration strategy.
35. At that stage, the officials took the view that there was no government housing programme that would permit the provision of housing for low and moderate income earners in the inner-city. They expressed the view that there was no business plan for social housing, despite the fact that there was already an established and very viable project happening in Steenberg (SOHCO's Steen Villas) and one under construction in Brooklyn (Communicare's Drommaris). Although not located in the inner-city and surrounds, both of these projects have proven to be extremely successful, and there is no reason why a similar development at Tafelberg would not be similarly viable.
36. In 2011, after some discussion on the above concerns, the Province agreed to withdraw the call for expressions of interest and to permit the preparation of an initial feasibility business plan for social housing on 3 of the sites. In the end, it was decided to pursue a scoping business plan assessment on 2 sites - the Tafelberg



School Site and the Woodstock Hospital Site.

37. The SHRA provided R500 000 to assist in the development of the initial scoping feasibility business plan which concluded that it was possible and feasible to develop Social Housing, or a mix of Social Housing and some market stock, on both of these sites. The plan is not attached to this affidavit because of its bulk, but a copy will be made available upon request.
38. The plan was presented, and made available to the DTPW officials responsible for the release of the sites. An offer was made to also assist the Province to develop a 'proposal assessment' approach that could more fairly assess the 'social development' value of proposals for the use of the sites with the highest value immediate return. This was never pursued by the DTPW.
39. At some stage, the City (together with NASHO), through assistance from the SHRA, also took part in negotiations for DTPW to reserve the Tafelberg and Woodstock Hospital sites to be transferred to the City at no cost, and for the City then to allocate the sites to its social housing partners.
40. In a letter dated 26 March 2013 the Head of Department: Human Settlements, Western Cape Government ("WCDHS") addressed a letter to the DTPW in respect of the disposal of the Tafelberg site. A copy of the letter is annexed marked "MM2". In that letter, DHS confirmed that the Tafelberg site is needed to further the provincial objective of developing integrated and sustainable human settlements. It stated that the Social Housing Programme could be used (it had been used to fund

developments in Milnerton, Bothasig, and Steenberg) and that the site could be made available on a long term lease, which would mean that government would retain the asset for sustainable future opportunities, while it would increase in value and would be efficiently managed and maintained externally.

41. It further indicated that funding had been invested by NASHO and the SHRA to evaluate the feasibility of using the Tafelberg site for rental housing and motivated why the site is very well suited for residential use, and Social Housing in particular. In conclusion, the WCDHS noted its objection to the Tafelberg site being disposed of and requested that it be transferred either to the WCDHS or the City, subject to the condition that it be used for affordable housing opportunities.

42. In terms of the Government Immovable Asset Management Act, 19 of 2007 ("GIAMA") it is a principle of immovable asset management that, in relation to a disposal, the custodian (in this case DPTW), must consider whether the immovable asset can be used:-

42.1. by another user or jointly by different users (which includes a provincial department that intends to use an immovable asset in support of its service delivery objectives);

42.2. in relation to social development initiatives of government; and

42.3. in relation to government's socio-economic objectives, including land reform, black economic empowerment, alleviation of poverty, job creation, and the redistribution of wealth.

43. Furthermore, under GIAMA, an immovable asset is surplus if it no longer supports the service delivery objectives of a user. A custodian is specifically empowered to dispose of a surplus immovable asset by the allocation of that immovable asset to another user or under the State Land Disposal Act, 48 of 1961. In deciding which option to follow, it is obliged to take into account the principles listed above.
44. Despite WCDHS confirming that it needed the Tafelberg site, the DTPW issued a call for expressions of interest in March 2014 in terms of which it proposed to dispose of the Tafelberg site to prospective private investors through a commercial use structure (as opposed to a sale).
45. In the call for expressions of interest, the DTPW listed the following as one of the strategic objectives of the Provincial Regeneration Programme: "*achieve densification by developing a percentage of the residential stock for affordable housing.*" It also stated that it was not DTPW's desire to sell the properties, but to make them available to prospective private investors by granting rights to use the land over a period long enough to facilitate the achievement of its financial objectives.
46. The DTPW thereafter issued requests for proposals for the Tafelberg site and in December 2015 advertised its intention to dispose of the property. I was surprised and disturbed to learn that an outright sale had taken place, as throughout my involvement with other stakeholders in this process the Provincial Government had insisted that the land would be leased, to ensure that the property remained in public ownership.

47. The outright sale of such a valuable piece of land severely restricts the ability of Province to control the current and future use of the site for social development purposes. The spirit and intent of the Municipal and Public Finance Management Acts is to ensure that provinces and municipalities use their assets for the long term achievement of the government's social developmental objectives.
48. Issues over the process and nature of the disposal are of further concern in that the Provincial Government has its own established Social Housing programme that is managed by the WCDHS. It has completed an approved provincial strategy plan on Social Housing and is further supporting the roll-out of sustainable social housing through its running of the Provincial Steering Committee (PSC) convened in terms of the national social housing policy. This committee brings together all the key stakeholders responsible for social housing in the Province as well as representatives from the National Department and the SHRA.
49. To the best of my knowledge, the DTPW did not at any point engage WCDHS in a serious discussion about how Tafelberg or the other sites could be used for Social Housing, nor was the potential of these sites for Social Housing ever discussed at the Western Cape Social Housing PSC.
50. In addition, the City's Social Housing and Land Restitution Programme and the Department of Spatial Planning and Urban Design is presently undertaking focussed work on the integration of Social Housing into the urban regeneration programme along the key transport nodes which would also include the inner-city. To my knowledge there was no linkage to these City initiatives of the Tafelberg site or the

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others pending release by the DTPW. This, despite the fact that the City had made several requests for the Tafelberg site to be "reserved" for social housing.

CONCLUSION

51. DTPW has a policy on Urban Regeneration in the City. One of the objectives of this strategy is to provide more 'affordable housing' opportunities in the inner-city of Cape Town.
52. As a mechanism to assist in achieving the strategy, DTPW is using the release of land and buildings in its ownership. However, DTPW has not set in place adequate processes or conditions for the release of these assets to achieve the objective of affordable housing. This is despite the Social Housing Programme which is specifically aimed at the use of land within the context of urban regeneration.
53. With the regard to the Tafelberg site, DTPW has disposed of inner-city land with great potential for providing quality housing for low and moderate income households and helping with the social, economic and racial integration of the City into the private land market.
54. In doing so, DTPW has prevented its present and future use for 'affordable housing' in an area where there is a great demand for this. It has done so without due regard to the 'social development' potential and value of the site, and without due diligence in exploring the possibility for Social Housing on the site. This was done despite repeated requests by both the WCDHS and the City's Human Settlements department to reserve, release or use the site for affordable housing.

55. Moreover, the decision to sell the site is based on who the highest bidder is at the present time, and not the long-term social value or costs associated with sprawl and spatial dislocation.
56. DTPW was tasked with following a process for the disposal of the Tafelberg site outlined in its urban regeneration strategy, which includes the development of affordable housing as one of its key objectives. However, the disposal process and ultimate form of disposal (i.e. an outright sale) has not given due regard to the potential for the use of this expendable government asset for the longer term social developmental objectives of the Province and the City in the short, medium and longer term.
57. It has ignored the existing government programme of Social Housing as a viable mechanism for achieving the objectives of urban regeneration while providing affordable good quality housing for people on low or moderate income. This is particularly important in the City of Cape Town where the urban regeneration over the past 14 years has meant increasingly that low and moderate income households are excluded from accessing residential accommodation in the city as a result of market forces.
58. The allocation of government land on an appropriate basis is part of the government's social developmental responsibility to achieve the important objective of greater urban integration. So on the rare occasions when an important potential residential site becomes available in an inner-city part of the City of Cape Town, it is incumbent on the government department concerned to properly assess its viability

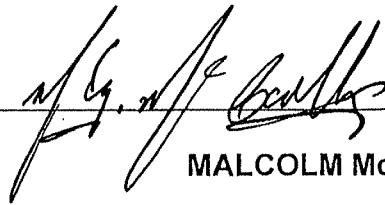
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for achieving the integration objectives of both its own policy as well as that of the City.

59. In this instance the DTPW did not take into account Cape Town's viable Social Housing Programme, where there are over 4200 good quality units under sustainable management by SHIs which are assisting in integrating the city and giving low and moderate households access to better locations. In the process, the tenants are contributing to the cost of their housing through the payment of their rentals.

60. The Tafelberg site is the first property in the first tranche of four properties, within the broader portfolio of almost twenty prime sites listed in the urban regeneration programme, to go to market. Its disposal by the province sets a precedent which will inform future disposals of publicly owned land within the urban regeneration programme.

61. As I have outlined above, since 1994 the City and Province have failed to take reasonable steps to redress spatial apartheid in central Cape Town. Suitable land for Social Housing / affordable housing is extremely scarce in the central or inner-city areas and will only become more so in the future. For the DTPW not to accede to the requests from the WCDHS or the City for the Tafelberg site to be released to them to be developed (primarily) for public housing, but rather to sell the land outright to the private sector is, in light of the applicable policy considerations, grossly unreasonable.



MALCOLM McCARTHY

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



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COMMISSIONER OF OATHS

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