



c/o: Michael Clark, Researcher

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7 June 2021

To: Pogiso Molapo
Manager: Social Housing and Land Restitution
City of Cape Town
posigo.molapo@capetown.gov.za

To whom it may concern,

RE: NDIFUNA UKWAZI COMMENT ON THE LEASE OF ERF 14888, NEWMARKET STREET TO HUMAN SETTLEMENTS DEPARTMENT FOR DEVELOPMENT OF SOCIAL HOUSING

1. Ndifuna Ukwazi is a non-profit activist organisation and law centre that combines research, organising and litigation in campaigns to advance urban land justice in Cape Town. Our primary mission is to expand and protect access to affordable housing towards building a more just and equal city.
2. On 7 May 2021, the City of Cape Town (“the City”) published a notice in the *Cape Argus* inviting interested parties to comment and/or object to its plans to transfer, by way of long-term lease, approximately 8 478m² of public land, namely erf 14888, Newmarket Street, Cape Town to the Human Settlements Department at a rental of R150 per year for the development of social housing.¹ According to the notice, the proposed duration of the lease is a 30 year period (the notice did not specify what the notice of termination period for the renewed lease might be). The proposed lessee plans on using the site for the

¹ See “Proposed transfer: Erf 14888 Woodstock Cape Town”, *Cape Argus* (7 May 2021), p. 17.

development of social housing. The City proposes to transfer the site, by way of lease, on the basis that it is “not required for the provision of a minimum level of basic municipal services”, would allow for the “development potential of the site to be maximised” and that the parking on the site (which will be retained) will “generate revenue”.² In support of the lease, the City says that the main benefits that will flow from the lease is that the City will be able to “convert unused land into ratable property” and that the site will “catalyse economic growth”.³

3. Ndifuna Ukwazi has read and considered the City’s invitation to comment and makes this submission to the City in accordance with the invitation to submit written comments.
4. We support the leasing out this strategically located City-owned land to the Human Settlements Department for the development of social housing, which we believe will contribute to advancing spatial justice through the delivery of affordable housing in line with the City’s own plans for the site (as set out in the City’s *Woodstock, Salt River and Inner City Affordable Housing Prospectus* is irrational and unreasonable).⁴ In the context of a profound housing and segregation crisis faced by the City, the proposed disposal by way of lease and proposed development of social housing offers a welcome opportunity for the City to begin to redress spatial inequality.
5. Ndifuna Ukwazi therefore supports to the proposed lease over the site for the purposes of the development of social housing as the City publicly committed to doing in the *Woodstock, Salt River and Inner City Affordable Housing Prospectus*.
6. Please see attached our comment to the City’s proposed lease of erf 14888, Newmarket Street, Cape Town to the Human Settlements Department.

Yours faithfully,

Ndifuna Ukwazi

(Per: Michael Clark, Researcher)

[Sent electronically]

² See “Proposed transfer: Erf 14888 Woodstock Cape Town”, *Cape Argus* (7 May 2021), p. 17.

³ See “Proposed transfer: Erf 14888 Woodstock Cape Town”, *Cape Argus* (7 May 2021), p. 17.

⁴ See City of Cape Town, “Woodstock, Salt River and Inner City Affordable Housing Prospectus” (2017), p. 19, available:

https://www.tct.gov.za/docs/categories/1313/TDA_Inner_City_Housing_Prospectus_Interactive_2809_2017.pdf. The prospectus specifically earmarks the site for the development of social housing.

NDIFUNA UKWAZI COMMENT ON THE PROPOSED LEASE OF ERF 14888, NEWMARKET STREET TO THE HUMAN SETTLEMENTS DEPARTMENT FOR THE DEVELOPMENT OF SOCIAL HOUSING

A. INTRODUCTION

1. As mentioned in our cover letter, Ndifuna Ukwazi is a non-profit activist organisation and law centre that campaigns to advance urban land justice in Cape Town through research, organising and litigation. Our primary mission is to expand, promote and protect access to affordable housing towards building a more just and equal city.
2. Over the last six years Ndifuna Ukwazi has been involved in legal, research and organising work around evictions, relocations, rental housing, the allocation of state-subsidised houses, and the promotion of social, transitional and inclusionary housing. We have been involved in a series of important court cases dealing with land occupations, evictions, the provision of alternative accommodation, and the state's constitutional and legislative obligation to combat spatial apartheid and promote spatial, economic and racial justice and equality through expanding access to affordable housing.
3. In 2019, Ndifuna Ukwazi published a research report, *City Leases: Cape Town's Failure to Redistribute Land*,⁵ which shed light on the manner in which the City of Cape Town ("the City") is disposing of many of the strategically important pieces of public land that it owns by leasing this land out for private use often at discounted rents, often for exclusive use for sporting purposes.
4. It is from this perspective that Ndifuna Ukwazi has considered the City of Cape Town's proposal to lease approximately 8 478m² of prime public land to the Human Settlements Department and supports the conclusion of the lease on the basis set out in this submission.

B. NDIFUNA UKWAZI'S COMMENT ON LEASE OF ERF 14888, NEWMARKET STREET TO HUMAN SETTLEMENTS DEPARTMENT

⁵ See N Budlender, J Sendin and J Rossouw, *City Leases: Cape Town's Failure to Redistribute Land*, Ndifuna Ukwazi Research Report (2019), available at: <https://www.dropbox.com/s/c524q5x89yrutcc/Ndifuna%20Ukwazi%20%28NU%29%20City-Leases-Cape-Towns-Failure-to-Redistribute-Land.pdf?dl=0>.

5. We welcome the City's lease of the strategically located erf 14888 site for the development of social housing on the basis that the site offers an opportunity to advance spatial justice through the delivery of social housing. Ndifuna Ukwazi is strongly in support of measures that ensure greater access to decent, safe and genuinely affordable accommodation for low-income and working-class households throughout the City.
6. The piece of land that is subject to the proposed lease is exceptionally well-located. It is situated in Cape Town's commercial, retail and leisure heartland where work opportunities in many different sectors abound, as well as being located at the entrance to the Woodstock / Salt River corridor running along Sir Lowry Street. The site is very close to various primary schools and high schools, social facilities (including the Cape Town and Woodstock libraries), various clinics (including the District Six and Chapel Street Clinics), equal distance from the Cape Town Central Police Station and the Woodstock Police Station, and close to the Cape Town University of Technology (CPUT)'s main campus.
7. The site is located along the Cape Town Urban Development Zone, an area within which the City has sought to encourage private-sector led development alongside public sector-led transport facilities. The site is also located within an area that enjoys bus, taxi and train public transit, particularly close to various bus, train and taxi routes. The site is located next to the Russell Street MyCiti bus stop and the Cape Town Central Train Station, the busiest train interchange in Cape Town, is located only a couple of hundred metres from the site. Densifying along the transportation nodes in Woodstock and Salt River are a critical element of the City's transit oriented development and would take advantage of the already established public transit backbone and the rail corridor.
8. It is well-located public land such as this site, which Ndifuna Ukwazi would like to see being released for the development of social and affordable housing.
9. Importantly, in 2017 the City identified and earmarked the site for the development of social housing in its *Woodstock, Salt River and Inner City Prospectus* as a result of its prime location and suitability for social housing.⁶ In the prospectus, the City stated that despite potential limitations of the site being located on reclaimed land, that the site should provide a minimum of 300 social housing units - thereby offering opportunities for 300 families who ordinarily would be excluded to gain access to opportunities and amenities

⁶ City of Cape Town, "Woodstock, Salt River and Inner City Affordable Housing Prospectus", p. 19.

in the City centre and Woodstock.⁷ The City's proposed lease is therefore a direct extension of the City's policies and plans that specifically identify this site as an important site on which social housing should be developed.

10. The prime location of the site, as well as the City's own public commitments to develop the site for social housing, means that it is ideal for the development of social housing. Ndifuna Ukwazi therefore strongly supports the proposed lease of the site to the Human Settlements Department for the development of social housing.
11. Despite the potentially progressive intentions of the Department's proposed lease and development project, our submission also raises one concern with the City's understanding of the legal framework governing the leasing of municipal land.

The City's understanding of the asset management legislation

12. Our only concern in relation to the lease relates to the City's understanding of the legal framework governing the City's immovable asset management. This is due to the fact that the City conceiving of public land as a purely financial or economic asset, rather than recognising the social function and value of public land. The City's advertisement in the *Cape Argus* was therefore concerning as it highlights a distorted understanding of the legal framework.
13. The City's primary rationale for the proposed lease is that the site is "not required for the provision of a minimum level of basic municipal services" and the development would "convert unused land into ratable property".
14. This language derives from sections 14(1) and (2) of the Local Government: Municipal Finance Management Act (2003) ("MFMA"), a national piece of legislation that aims to regulate and secure the sound and sustainable management of financial affairs of local government and, in particular, the management of the assets of local government. Section 14(1) and (2) of the MFMA provides that a municipality may not transfer ownership of immovable property unless the municipal council has decided "on reasonable grounds" that the land "is not needed to provide the minimum level of basic municipal services". While this is a standard that applies to the determination of whether a municipality can legally dispose or permanently transfer property, the notice published by the City in the

⁷ City of Cape Town, "Woodstock, Salt River and Inner City Affordable Housing Prospectus", p. 19.

Cape Argus uses this language to justify the conclusion of a lease. It is therefore apt to consider the legal standard that this language imposes on the City's justification of the lease.

15. In *Oranje Water CC v Dawid Kruijer Local Municipality* (“*Oranje Water*”),⁸ the Northern Cape High Court was asked to give meaning to the phrase “minimum level of basic services” in the context of the functions and obligations of local government. In determining what this phrase meant, the court analysed various pieces of legislation, including section 153 of the Constitution, the Local Government: Municipal Systems Act, the MFMA and the Housing Act (1997).⁹ The court found that there was

“a distinction between 'basic municipal services' and 'municipal services'. The legislative framework referred to above, supports such distinction. In this context parks and recreation are in fact a 'municipal service' but do not fall under 'basic municipal services'. In such context, 'basic municipal services' includes the provision of water, sanitation, electricity, roads, storm water drainage and transport. I am fortified in this conclusion by the wording of s14(2)(a) which is to the effect that the municipality decided that the asset is not needed ‘... to provide the minimum level of basic municipal service.’ (emphasis added) In my view 'parks and recreation', in a different and better time in our shared future may well come to be regarded as a minimum level of basic municipal service. However, in our present context of service delivery protests relating to the continued reality of the 'bucket system' for sanitation and the lack of potable water, *inter alia*, being reported on a daily basis in communities all over our country, this is clearly not so.”¹⁰

16. According to the court, the “minimum level of basic municipal services” is “inextricably linked to the requirement to uplift poor and disadvantaged communities that fall under the jurisdiction of local government”.¹¹

17. Ndifuna Ukwazi submits that the *Oranje Water* case clearly indicates that the provision of social and/or affordable housing constitutes “a minimum level of basic services” in the context of Cape Town's housing affordability crisis. Accordingly, when the City disposes of well-located land, through lease or sale, for the development of social or affordable

⁸ *Oranje Water CC v Dawid Kruijer Local Municipality*, Judgement, Northern Cape High Court, Case No 2150/2016 (6 July 2018): <http://www.saflii.org/za/cases/ZANCHC/2018/42.html>.

⁹ *Oranje Water*, paras. 37-43.

¹⁰ *Oranje Water*, para. 41 (original emphasis).

¹¹ *Oranje Water*, para. 43.

housing, this would constitute a disposal that would give effect to a minimum level of basic services.

18. In this regard, we assert that the property is needed for the provision of the minimum level of a basic service, namely the provision of social or affordable housing in a context of dire housing need and an acute housing affordability crisis. Moreover, the lease of the property is in line with the City's own policies and strategic plans that prioritise the development of the site into social housing.

F. CONCLUSION

19. For the reasons outlined above, Ndifuna Ukwazi supports the City's proposed lease of erf 14888, Newmarket Street, Cape Town to the Human Settlements Department for the development of social housing, which we believe will contribute to advancing spatial justice through the delivery of affordable housing in line with the City's own plans for the site (as set out in the City's *Woodstock, Salt River and Inner City Affordable Housing Prospectus* is irrational and unreasonable).

Yours faithfully,

Ndifuna Ukwazi

(Per: Michael Clark, Researcher)