



c/o: Michael Clark, Researcher
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7 August 2020

To: Ms Ruby Gelderbloem
Director: Property Management
Economic Opportunity and Asset Management Department
City of Cape Town
ruby.gelderbloem@capetown.gov.za

For attention: Mr Pieter Stümpher
Professional Officer: Property Management
Economic Opportunity and Asset Management Department
City of Cape Town
pieter.stumpher@capetown.gov.za

To whom it may concern,

RE: NDIFUNA UKWAZI OBJECTION TO THE DISPOSAL OF PORTIONS OF ERVEN 10845 AND 10852, BELVILLE TO FRESHWORTHS CC

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.

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

Board of Trustees: Shuaib Manjra (Chairperson), Ruth Hall,
Phumeza Mlungwana, Mercy Brown-Luthango, Michael Evans

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2. On 3 July 2020, 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 dispose of approximately 4 368m² of public land, namely portions of erven 10845 and 10852, Bellville to Freshworths CC, the current lessee, by way of sale.¹ According to the notice, the site is valued at R8 750 000 (plus VAT) and was used as a market for fresh produce. The City proposes to sell the site on the basis that the “occupant has been leasing the facility, known as the Bellville Market, from the City for over 30 years” and “in order to address security issues at the property, urgent upgrades and renovations to the facility are required”.²
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. As will be demonstrated, it is our view that disposing of strategically located City-owned land at a discounted rate to a private entity instead of using it for transformation and redress, or leveraging it to advance spatial justice through the delivery of affordable housing in line with the City’s own Transit Oriented Development is irrational and unreasonable. The proposed disposal is unacceptable, especially in the context of a profound housing and segregation crisis faced by the City and the opportunity the parcel of land offers the City to redress spatial inequality in the area.
5. Moreover, the rationale for the disposal does not meet the requirements set out in the Municipal Finance Management Act (“MFMA”) that the property can only be disposed of if it is not required for the provision of a minimum level of basic municipal services. We contend that the property is needed for the provision of a minimum level of basic municipal services, namely the development of affordable housing.
6. Ndifuna Ukwazi therefore objects to the proposed disposal. We call on the City to refrain from disposing of the property and to commit to investigating the feasibility of developing affordable housing on the site.

¹ See “Closure and disposal of Portions of Erven 10845 and 10852 Bellville to Freshworths CC”, *Cape Argus* (3 July 2020), p. 12.

² See “Closure and disposal of Portions of Erven 10845 and 10852”, *Cape Argus*, p. 12.

7. Please see attached our objection to the City's proposed disposal of portions of erven 10845 and 10852, Bellville to Freshworths CC by way of sale.

Yours faithfully,

Ndifuna Ukwazi

(Per: Michael Clark, Researcher)

[Sent electronically]

NDIFUNA UKWAZI OBJECTION TO THE DISPOSAL OF PORTIONS OF ERVEN 10845 AND 10852, BELVILLE TO FRESHWORTHS CC BY WAY OF SALE

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. Last year, Ndifuna Ukwazi published a research report, *City Leases: Cape Town's Failure to Redistribute Land* (2019),³ 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.
4. It is from this perspective that Ndifuna Ukwazi has considered the City of Cape Town's proposal to dispose of approximately 4 368m² of public land by way of sale and objects to the disposal on the basis set out in this submission.

³ 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/c524q5x89yrtcc/Ndifuna%20Ukwazi%20%28NU%29%20City-Leases-Cape-Towns-Failure-to-Redistribute-Land.pdf?dl=0>.

B. CAPE TOWN'S APARTHEID SPATIAL LEGACY AND EXCLUSIONARY HOUSING MARKET

5. Some general comments on Cape Town's apartheid spatial legacy and exclusionary housing market, and the need for affordable housing, warrant mentioning.

Cape Town's Apartheid Spatial Legacy

6. The legacy of colonial and apartheid spatial planning continues to dominate Cape Town's geography. Twenty-six years after apartheid, Cape Town remains the most spatially divided city in the country – with residential settlement patterns still segregated along race and class lines.
7. The City continues to be split in two: The majority of Black and Coloured families live in densely populated, peripheral townships and informal settlements where most are trapped in a cycle of poverty; while (predominantly) White people inhabit the well-located residential areas of Cape Town where jobs, transport facilities and social amenities are plentiful.
8. While this spatial inequality has its historical origin in the colonial and apartheid eras,⁴ it has been exacerbated since the end of apartheid. Post-apartheid housing policy has prioritised scaling up of state-subsidised housing by developing larger-scale housing projects in peripheral areas where land is usually more affordable. This approach has had the unintended consequence of reproducing spatial inequality and social exclusion by creating poverty traps on the outskirts of the city far from economic opportunities and social amenities.
9. Where you live in the city matters – it determines your opportunities in life and the quality of services you receive. Living on the urban periphery makes you poor and keeps you poor. Many of these peripheral areas have limited access to basic services, forcing families to share an insufficient number of temporary outdoor toilets and collect water from communal standpipes. The schools in

⁴ During the colonial era until the end of apartheid, various laws were used to systematically dispossess Black and Coloured people of their land. Millions of Black and Coloured people were forcibly removed from the cities and dumped in peripheral areas far away from any existing social and support networks, hospitals, schools, and jobs. See, for example, M Clark, *Pathways out of Poverty: Improving Farmdwellers' Tenure Security and Access to Housing and Services*, Association for Rural Advancement (AFRA) Research Report (2017), pp. 8-10; and S Wilson, J Dugard and M Clark, "Conflict Management in an Era of Urbanisation: Twenty Years of Housing Rights in the South African Constitutional Court", *South African Journal on Human Rights* (2025), 31(3), pp. 472-477.

these areas generally perform worse, gang violence is rife, substance abuse is more common, and social amenities such as schools, hospitals and clinics are hard to find.

10. Poor and working-class people spend a disproportionate component of their income and time on unreliable transport. In Cape Town, low-income earners spend on average 45% of their earnings on transport compared a global average of 5-10%.⁵ This means poor and working-class people spend long hours commuting and contribute to congestion and pollution on the roads.
11. Critically, research shows that there is a direct relationship between where people live in South African cities and the likelihood that they will find employment opportunities.⁶ Far-flung townships and informal settlements therefore end up trapping the poor in a cycle of structural poverty.⁷
12. This spatial inequality, inverse densification and urban sprawl costs poor and working-class families more every day and costs the City more in the long term. The present spatial distribution is unsustainable socially, economically and environmentally.

Cape Town's Exclusionary Housing Market

13. One of the primary drivers of spatial inequality in Cape Town is the City's acute housing affordability crisis – with stubbornly high rents and property prices. The City's failure to regulate land and property markets has meant that it has remained inaccessible to most poor and working-class families.
14. The average sale price for a home in Cape Town is the highest in South Africa and buying a home is unaffordable for the vast majority of residents. In early 2019, the City registered the seventeenth highest year-on-year property inflation in the world at 9.1% (higher than any other city in Africa).⁸ The effect of property inflation is even more worrying when delineated by market share and area.

⁵ City of Cape Town Transport, *Transport Development Index* (2016).

⁶ See, generally, J Budlender and L Royston, *Edged Out: Spatial Mismatch and Spatial Justice in South Africa's Main Urban Areas*, Socio-Economic Rights Institute of South Africa (SERI) Research Report (2016).

⁷ See Budlender and Royston, *Edged Out*, p. 2. See also the High Level Panel on the Assessment of Key Legislation and the Acceleration of Fundamental Change (High Level Panel), *Report of the High Level Panel on the Assessment of Key Legislation and the Acceleration of Fundamental Change* (November 2017), p. 81.

⁸ High Level Panel, *Report of the High Level Panel*, p. 81.

⁸ Frank Knight, "Global Residential Cities Index: Q4 2019" (2019), p. 2:

<https://content.knightfrank.com/research/1026/documents/en/global-residential-cities-index-q4-2019-7111.pdf>.

Property prices at the highest end of the market have decreased slightly, but property prices in middle-priced and lower-priced markets continue to increase.⁹ In lower-priced markets the year-on-year inflations is “in the double digit territory”.¹⁰

15. According to 2011 Census Data, 75% of households in Cape Town earn less than R18 000 a month (the figure rises to 92% for black households), and most people cannot afford to pay more than R3000 a month in rent or R281 000 to own.¹¹ In 2019, Stats SA found that the median income of a South African is R13 546 per annum, or just R1 129 per month.¹² This puts rent and homeownership in well-located areas close to economic nodes out of reach for most middle-class South Africans, let alone the poor or working class.
16. The enduring effect of Cape Town’s property bubble, beyond inflation increases in property values, and soaring rents mean that only the very wealthy can afford to live in well-located areas close to economic nodes.
17. As a result, middle class residents and private property developers are increasingly eyeing traditionally working class neighbourhoods – driving property prices in those areas. The overall effect has been that poor and working-class families are increasingly forced out of well-located areas to the urban periphery as a result of gentrification or large-scale evictions.

COVID-19 has exacerbated existing inequalities

18. The economic fall out as a result of the COVID-19 outbreak has exacerbated existing social challenges including spatial inequality, and has increased the need for well-located social and affordable housing. In many respects, the economic burden of the virus has, and will continue to be, disproportionately borne by the poor and working class. Many have lost their jobs or livelihoods, face

⁹ First National Bank (FNB), “Cape Town Sub-Regional House Prices” (August 2019), p. 1: <https://www.fnb.co.za/downloads/economics/reports/2019/CapeTownSub-RegionalHousePricesAug.pdf>.

¹⁰ FNB, “Cape Town Sub-Regional House Prices” (August 2019), p. 1.

¹¹ See Ndifuna Ukwazi, *Inclusionary Housing: Measuring Access to Residential Development by Race and Class* (November 2018).

¹² Stats SA, “Inequality Trends Report” (2019).

income and/or food insecurity and, despite moratoriums imposed by the national government, face eviction and removal from their homes as a result of insecure tenure.¹³

19. Data shows that the economic impact of the COVID-19 pandemic, the consequent economic recession and curfews or lockdowns imposed by the national government, has already led to significantly higher rates of unemployment, diminished incomes and higher rates of hunger. The South African National Income Dynamics Study – Coronavirus Rapid Mobile Survey (“NIDS-CRAM”), a survey of a representative sample of 7 000 South Africans and the largest survey of this nature to emerge from the Global South, paints a grim picture of job losses and hunger in South Africa.¹⁴
20. According to the study, between February and April 2020, 3 million South Africans lost their jobs, and a further 1.5 million lost their income (through being furloughed).¹⁵ This represents a 18% decline in employment, with the number of employed persons dropping from 17 million in February to only 14 million in April.¹⁶ The vast majority of these job losses were concentrated among already disadvantaged groups, including those in the informal economy, women, the youth and less educated. Women were particularly hard hit, accounting for up to 2 million of the 3 million job losses.¹⁷ The study found half of all the respondents (47%) reported losing their main source of income.¹⁸ This indicates that 1-in-3 (33%) income earners in February did not earn an income in April, representing a massive decline in employment and other income generating activities.¹⁹

¹³ In South Africa, National Treasury Director General Dondo Mogajane has warned that South Africa’s unemployment rate could rise above 40%, while the Chamber of Commerce projects unemployment figures as high as 50%. See S Zulu, “SA’s unemployment rate could reach 40% due to COVID-19 - Mogajane”, *Eye Witness News (EWN)* (12 May 2020); and Associated Press, “COVID-19: South Africa’s unemployment rate expected to reach 50% as economy keeps plummeting”, *IOL News* (24 May 2020).

¹⁴ See NIDS-CRAM, “Overview and Findings: NIDS-CRAM Synthesis Report Wave 1” (2020), which can be found, alongside all the NIDS-CRAM working papers at the NIDS-CRAM website, available: <https://cramsurvey.org>. See also, for a summary of the results, Spaul, “The jobs reckoning is here: 3 million jobs lost”.

¹⁵ See NIDS-CRAM, “Overview and Findings: NIDS-CRAM Synthesis Report Wave 1”, p. 3; Spaul, “The jobs reckoning is here: 3 million jobs lost”.

¹⁶ NIDS-CRAM, “Overview and Findings: NIDS-CRAM Synthesis Report Wave 1”, pp. 3-5.

¹⁷ NIDS-CRAM, “Overview and Findings: NIDS-CRAM Synthesis Report Wave 1”, p. 5; Spaul, “The jobs reckoning is here: 3 million jobs lost”.

¹⁸ Spaul, “The jobs reckoning is here: 3 million jobs lost”.

¹⁹ See NIDS-CRAM, “Overview and Findings: NIDS-CRAM Synthesis Report Wave 1”, p. 4. The NIDS-CRAM data confirms preliminary data from Statistics South Africa (“StatsSA”). See StatsSA, “Results from Wave 2 Survey on the Impact of the COVID-19 Pandemic on Employment and Income in South Africa” (May 2020), available: <http://www.statssa.gov.za/publications/Report-00-80-03/Report-00-80-03May2020.pdf>.

21. Given the extent of job and income losses recorded in the NIDS-CRAM study, it is unsurprising that this economic devastation would have a profound impact on poor and working class people's ability to pay for and access housing. A recent nationwide survey of 80 000 tenants in South Africa, entitled "How COVID-19 has affected South African Tenants", has highlighted how the pandemic has negatively affected the tenure security of many poor and working class households.²⁰ The survey looked into questions relating to relocation plans, affordability, landlord behaviour and payment assistance connected to the COVID-19 pandemic. It found that a large majority of tenants have, and will continue to, struggle to make payment of their monthly rental amounts as a result of the COVID-19 pandemic and the national lockdown. Importantly, the survey concluded that the "responses from tenants painted an even more severe picture than expected, with the most staggering statistic being that the large majority of tenants' rental affordability has been impaired as a result of this catastrophic event." Further key findings of the survey report are that:

21.1 78.8% of tenants' income has been affected by Covid-19;

21.2 both the high end (rentals of R12,000+ per month) as well as the low end (rentals R2,000 – R3,999 per month) of the market are affected; and

21.3 the financial effects of the lockdown have naturally affected tenants' ability to pay their rent. Only 37% can afford to pay their rent in full and a significant 22% cannot pay their rent at all.

22. These findings indicate that the COVID-19 outbreak will have a devastating impact on the right of access to adequate housing to many poor and working class households and, consequently, heightened the urgent need for well-located social and affordable housing.

C. PUBLIC LAND HAS THE POTENTIAL TO ADDRESS SPATIAL APARTHEID

23. The City has consistently blamed this spatial injustice on a lack of available well-located land that could be used for affordable housing.²¹ The City is not wrong when it says that suitable land is

²⁰ The survey and report were compiled in May 2020 by a residential rental proptech platform - *Flow*. See Flow, "How COVID-19 has affected South African tenants", *Flow Findings Research Report* (May 2020), available: <https://flow.rent/tenants>.

²¹ See, for example, P Grobbelaar, "Cape Town hurts housing", *Property 24* (6 July 2011).

extremely scarce in central or well-located areas – it is expensive to buy and will only become more so in the future. But the City is missing the most obvious solution: It already owns vast tracts of land in well-located areas, of which a large proportion is unused or under-utilised given its potential.²²

24. By unlocking and releasing well-located state land for the development of social or affordable housing, the City could alleviate the housing affordability crisis and reverse the City's apartheid legacy.²³ The City should embrace the 'social value' of public land, and adopt a more transparent and socially orientated approach to the portfolio of state assets. This is in line with the recommendations to alleviate poverty and inequality in the context of urban land rights issued by the High Level Panel on the Assessment of Key Legislation and Acceleration of Fundamental Change and the Mandela Initiative.²⁴
25. However, despite the potential that this public land holds, the City has continued to dispose of a large chunk of the public land it owns by selling or leasing this land to private entities (often without including a condition for affordable housing to be developed).²⁵
26. A research report published by Ndifuna Ukwazi in 2019 investigated the City's practice of disposing of land and delivered some concerning findings (while this research report was primarily focused on the City's practice of leasing out public land, many findings pertain to disposals in the form of sales).²⁶ This report highlighted the City's myopic approach of the value of public land and its failure to

²² According to the City's own policies it owns 87 000 pieces of land, and while not all of that land is not well-located or suited for the development of affordable housing, much of that land will be well-located and suited for housing development. See City of Cape Town, "Management of Certain of the City of Cape Town's Immovable Property Policy" (26 August 2010), Ref No C54/08/10, cl. 5.2. See also, generally, Ndifuna Ukwazi, *City Leases*, p. 1.

²³ See Ndifuna Ukwazi, *City Leases*. See also M Clark, "Cape Town's course of injustice: Subsidising the rich to exclude the poor", *Daily Maverick* (28 January 2020).

²⁴ See High Level Panel, *Report of the High Level Panel*; and M Clark and LR Circolia, "Informalisation, Urban Poverty and Spatial Inequality", Mandela Initiative Brief (2018).

²⁵ As noted in our cover letter, the City's current sporting tariff is R1 058 per year. See City of Cape Town, "2029/2020 Budget" (May 2019), Annexure 6 – Tariffs, Fees and Charges Book, Economic Opportunity and Asset Management – Property Management, p. 6.2:

http://resource.capetown.gov.za/documentcentre/Documents/Financial%20documents/Ann6_2019-20_Property%20Management.pdf. It should also be noted that the City's Property Management Department has encouraged private organisations to rent public land at these low rates, see City of Cape Town, "Applying to Buy or Lease Municipal Land" (August 2019):

https://resource.capetown.gov.za/documentcentre/Documents/Procedures,%20guidelines%20and%20regulations/PropertyManagement_Applying%20to%20buy%20or%20lease%20land.pdf.

²⁶ See Ndifuna Ukwazi, *City Leases*, pp. 3-5.

prioritise public land for the development of affordable housing. The failure to use prime public land in this way is a significant missed opportunity.

27. In the research report, Ndifuna Ukwazi urged the City to:

27.1 Establish or delegate a coordinated department responsible for land management with clear powers and responsibilities to proactively manage all its public land to ensure that it meets its broad constitutional and legislative obligations to redistribute land and balance the competing interests of different departments that need access to land;

27.2 Immediately review its largest and most well-located parcels of public land, proactively rezone them, negotiate the end of leases, and decline to renew leases or dispose of land where land is needed for housing; and

27.3 Tender land, at a nominal amount, to social housing institutions or private companies that can develop the greatest proportion of affordable housing for families earning between R3 500 and R18 000 a month and ensure homes are affordable to rent or buy in perpetuity.

28. With these comments in mind, Ndifuna Ukwazi turns to the constitutional and legislative obligations with which the City is compelled to comply.

D. CONSTITUTIONAL AND LEGISLATIVE IMPERATIVE TO PROMOTE SPATIAL JUSTICE

29. This section describes the City's obligations under South African law. In particular, how the Spatial Planning and Land Use Management Act ("SPLUMA") imposes obligations on cities and all their municipal departments to promote socially integrated and spatially just human settlements. To be truly integrative and to discharge the obligations under SPLUMA, planning and land management decisions must promote the development of well-located affordable housing.

The Constitution

30. The Constitution of the Republic of South Africa, 1996 (“the Constitution”) recognises South Africa’s history of forced removals and dispossession and places obligations on the state to proactively redress past injustice. This is clearly evident from the preamble of the Constitution, which states that the Constitution was enacted in order to “heal the divisions of the past and establish a society based on democratic values, social justice and fundamental human rights”.
31. Section 25(5) of the Constitution places an obligation on the state to ensure that citizens progressively gain access to land on an equitable basis,²⁷ and section 26 sets out the state’s obligation to progressively realise the right to housing.²⁸ These obligations cannot be divorced from, but rather give context to, the state’s responsibility, at all levels of government, to advance spatial justice.
32. When read together these rights imply that the state has a duty to do more than simply building homes where-ever – the *location of housing delivery becomes a crucial component of the realisation of this right.*²⁹ It is therefore not sufficient for the City to claim that it has fulfilled its obligations to provide housing by developing housing opportunities on cheap land on the periphery of the City, as this type of housing is likely to replicate the very spatial inequality these constitutional provisions seek to undo.

SPLUMA and LUPA

²⁷ See section 25(5) of the Constitution, which reads:

“The state must take reasonable legislative and other measures, within available resources, to foster conditions which enable citizens to gain access to land on an equitable basis.”

²⁸ Section 26 of the Constitution reads:

“(1) Everyone has the right to have access to adequate housing.

(2) The state must take reasonable measures, within available resources, to achieve the progressive realisation of this right.

(3) No-one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions.”

²⁹ United Nations Committee on Economic, Social and Cultural Rights, *General Comment No 4: The Right to Adequate Housing (Art. 11(1) of the Covenant)* (13 December 1991), UN Doc E/1992/23.

33. The Spatial Planning and Land Use Management Act (2013) (“SPLUMA”) is national legislation which aims to advance spatial transformation. It articulates the obligations on the state to advance and support the development of spatially just cities. These obligations are reinforced in the Western Cape Land Use and Planning Act (2014) (“LUPA”).
34. SPLUMA and LUPA set out progressive development principles which must apply to spatial planning, development and land use management when considering any application that impacts on or may impact on the use and development of land at all levels of government, including at the local level. These principles include spatial justice,³⁰ spatial sustainability³¹ and spatial efficiency.³²
35. Importantly, SPLUMA and LUPA should not only apply to how the state governs how others use land, but also to how it uses its *own* land. Land use and land management should be guided by the same principles, whether driven by the private or public sector.
36. The overall effect of these provisions is that the City is also required to use its own land to give effect to spatial transformation and should *proactively* review the land that it owns, and consider how this land could be used to more actively give effect to spatial justice; and social, economic and racial inclusion.

Municipal Finance Management Act

37. The Local Government: Municipal Finance Management Act (2003) (“MFMA”) is a national piece of legislation that aims to regulate and secure the sound and sustainable management of financial affairs of local government. It sets out the requirements that municipalities are obliged to follow before disposing of immovable property that they own.
38. In particular, section 14(1) and (2) of the MFMA provide that a municipality may not transfer ownership as a result of a sale or otherwise permanently dispose of immovable property unless two conditions have been met:³³

³⁰ See s 7(a)(iii) of SPLUMA and ss 59(1)(a) and (g) of LUPA.

³¹ See ss 7(b)(iv)-(vii) of SPLUMA and ss 59(2)(a)(vi)-(vii) and 59(2)(g) of LUPA.

³² See ss 7(c)(i) and (ii) of SPLUMA and s 59(3)(b) of LUPA.

³³ See ss 14(1) and (2) of the MFMA.

- 38.1 The municipal council has decided “on reasonable grounds” that the land “is not needed to provide the minimum level of basic municipal services”; and
- 38.2 The municipal council has “considered the fair market value” and “the economic and community value to be received in exchange for” the piece of land.
39. These provisions mean that the City can *only* dispose of property if the property is not needed for a minimum level of basic services. The requirements are reaffirmed by section 11 of the Management of Certain of the City of Cape Town’s Immovable Property Policy (“the Immovable Property Policy”).³⁴
40. In *Oranje Water CC v Dawid Kruiper Local Municipality* (“*Oranje Water*”),³⁵ 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 means, 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).³⁶ 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

³⁴ See s 11 of Management of Certain of the City of Cape Town’s Immovable Property Policy.

³⁵ *Oranje Water CC v Dawid Kruiper Local Municipality*, Judgement, Northern Cape High Court, Case No 2150/2016 (6 July 2018): <http://www.saflii.org/za/cases/ZANCHC/2018/42.html>.

³⁶ *Oranje Water*, paras. 37-43.

potable water, *inter alia*, being reported on a daily basis in communities all over our country, this is clearly not so.”³⁷

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”.³⁸

41. Ndifuna Ukwazi submits that the *Oranje Water* case clearly indicates that the provision of social or affordable housing constitutes “a minimum level of basic services” in the context of Cape Town’s housing affordability crisis. Accordingly, well-located land that is able to be used for the development of social or affordable housing should not be disposed of by way of sale or should only be disposed of if such disposal is subject to a condition to develop affordable housing.
42. We also assert that section 14(1) and (2) of the MFMA require more from a municipality than to simply requesting whether internal service departments require the property for the provision of a minimum level of basic services. Instead, these provisions require a municipality to take an active, enquiring approach by questioning whether well-located public land could be used in a way that would give effect to its developmental duties and, particularly, its ability to provide a minimum level of basic services.

Management of Certain of the City of Cape Town’s Immovable Property Policy

43. The Management of Certain of the City of Cape Town’s Immovable Property Policy provides a practical framework for the management of the City’s property.
44. According to the Policy, the City’s property management must adhere to a number of core management principles. These include the “best and optimal” utilisation of a property; the best interests of the City’s local community; the City’s *own* strategic objectives (as reflected in its policies and by-laws); and the use of the City’s property “to promote social integration, to redress existing spatial inequalities, to promote economic growth, to build strong, integrated and dignified

³⁷ *Oranje Water*, para. 41 (original emphasis).

³⁸ *Oranje Water*, para. 43.

communities and to provide access to residential opportunities, services, amenities, transport and opportunities for employment”.³⁹

45. According to the Immovable Property Policy, property management must therefore give due regard to the City’s own strategic objectives and prioritise spatial transformation.

E. OBJECTION TO THE PROPOSED DISPOSAL OF PORTIONS OF ERVEN 10845 AND 10852, BELVILLE TO FRESHWORTHS CC

46. The City is considering the disposal of approximately 4 368m² of public land, namely portions of erven 10845 and 10852, Bellville to Freshworts CC, the current lessee, by way of sale. According to the notice, the site is valued at R8 750 000 (plus VAT) and was used as a market for fresh produce. The City proposes to sell the site on the basis that the “occupant has been leasing the facility, known as the Bellville Market, from the City for over 30 years” and “in order to address security issues at the property, urgent upgrades and renovations to the facility are required”.⁴⁰

47. The piece of land that is subject to the proposed disposal is very well-located. It is close to the Bellville’s Central Business Node, various primary schools and high schools, social facilities, some of the largest hospitals in the Province (Tygerberg Hospital, Louis Leipoldt Mediclinic, Cape Eye Hospital and Karl Bremmer Hospital), and three universities have campuses in the area (the University of the Western Cape, Cape Town University of Technology and Northlink College).

48. The site is located within the Voortrekker Road Corridor Integration Zone, an area which the City has prioritised for development in terms of its policy of Transport Orientated Development as a result of the extensive public transport linkages between Cape Town CBD and Bellville. The site is also located within an area that enjoys bus, taxi and train public transit, and is particularly close to a number of train stations and junctions. In fact, the Bellville Public Transportation Interchange is the second busiest interchange in Cape Town, only after Cape Town Station. Densifying in the Voortrekker Road Corridor Integration Zone is a critical element to transit oriented development and

³⁹ See s 6 of Management of Certain of the City of Cape Town’s Immovable Property Policy.

⁴⁰ See “Closure and disposal of Portions of Erven 10845 and 10852”, *Cape Argus*, p. 12.

would take advantage of the already established public transit backbone of the Voortrekker Road and the rail corridor.

49. Moreover, the City also owns large amounts of the land that adjoins the portions of erven 10845 and 10852 that are subject to disposal and in the immediate vicinity of the site.⁴¹ In fact, not taking into account the other parcels of land that the City owns in the vicinity, the remainder of erven 10845 and 10852 alone consists of almost 50 hectares of public land.⁴² If the City were to view the land that it owns in the area as a whole (as opposed to viewing them as individual smaller plots), the colossal size of the public land holdings in the area offers the City a unique opportunity to make a material contribution to spatial transformation.
50. The prime location of the site, as well as the considerable amount of land owned by the City in the immediate vicinity, means that it is ideal for the development of social or affordable housing. Ndifuna Ukwazi therefore objects to the proposed disposal of the site to Freshworths CC for the reasons elaborated on below.

Aligning the City’s practice with its legislative obligations and political commitments

51. The City of Cape Town current housing policy is largely dictated by its policy of Transport Orientated Development (“TOD”) in terms of which the City is committed to developing social and affordable housing along various transport nodes. This approach recognises that *the location of housing is important*.
52. In line with its policy of Transit Orientated Development, the City in 2017 committed to releasing 11 sites in Woodstock, Salt River and the inner-city for the development of affordable housing. However, much more needs to be done to address the housing and segregation crisis outlined above.
53. In particular, the City’s prioritisation of Transit Orientated Development needs to be reflected in the way that it manages its own assets.

⁴¹ Ndifuna Ukwazi recently objected to the renewal of a lease over another portion of erf 10845 to Ballpark Promotions (Hardekraaltjie Caravan Park).

⁴² This calculation is based on the measurements of the erven found on the City’s General Valuation Roll (2018).

54. As mentioned above, the site that the City proposes disposing of is located within the Voortrekker Road Corridor Integration Zone, an area specifically earmarked by the City for transit orientated development. As such, it would make little sense to dispose of the land in question to a private entity when it could instead be used to further the City's stated priority of integration.
55. The site therefore offers the City a perfect opportunity to marry its practice with its legislative obligations and political commitments by using this well-located public land for the development of social or affordable housing.

Irrational and unreasonable disposal of strategically located asset

56. As noted above, section 14(1) and (2) of the MFMA provide that a municipality may not transfer ownership as a result of a sale or otherwise permanently dispose of immovable property unless two conditions have been met:⁴³
- 56.1 The municipal council has decided "on reasonable grounds" that the land "is not needed to provide the minimum level of basic municipal services"; and
- 56.2 The municipal council has "considered the fair market value" and "the economic and community value to be received in exchange for" the piece of land.
57. We contend that the City cannot dispose of the property as it has not complied with either of the above requirements. 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 sale of the property is in direct conflict with the City's own policies and strategic plans that prioritise integrated development in the area.

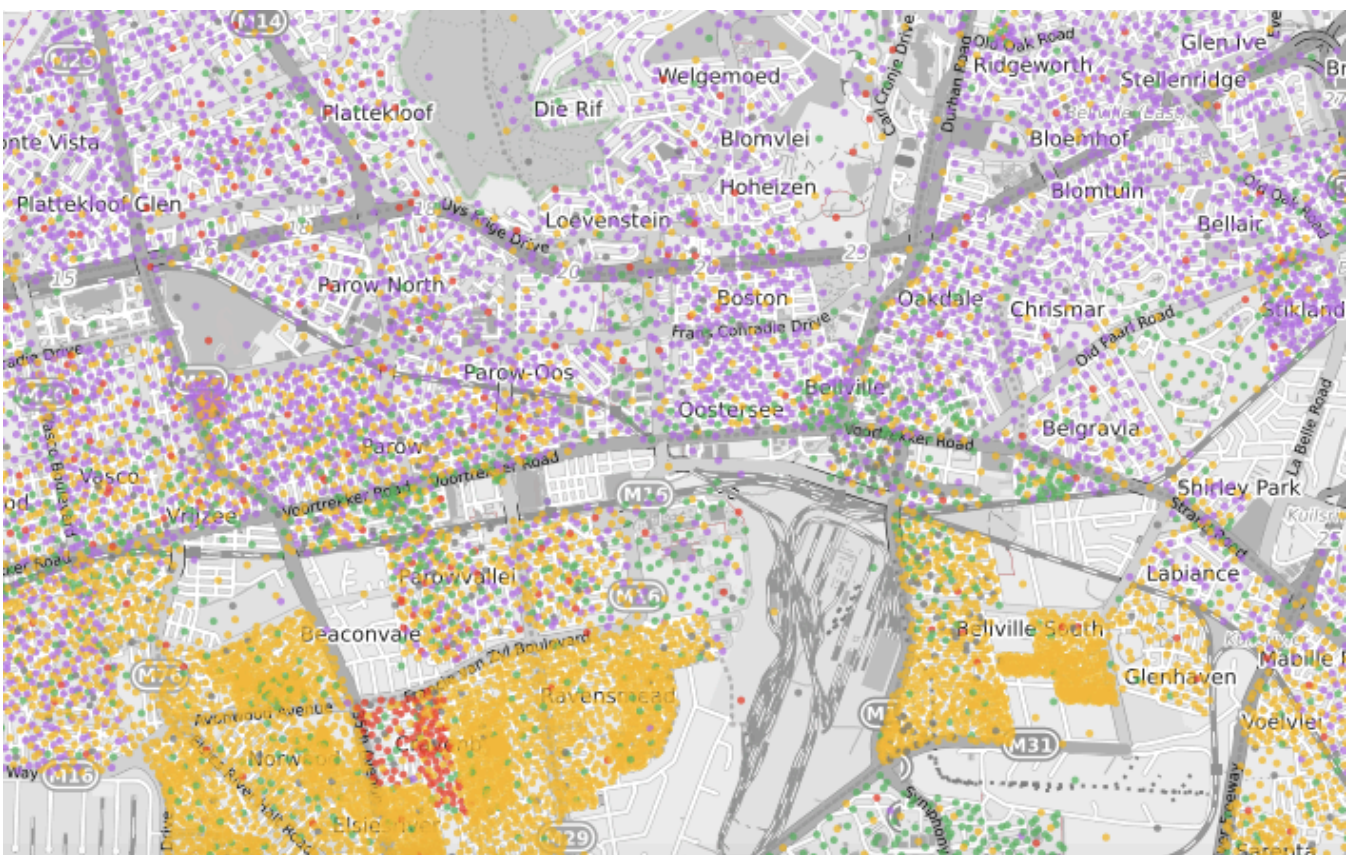
⁴³ See ss 14(1) and (2) of the MFMA.

58. The MFMA also requires the City to consider “the fair market value of the asset and *the economic and community value* to be received in exchange for the asset.”⁴⁴ We believe that the proposed disposal should also fails to comply with this requirement.
59. The City argues that the disposal of the site would generate “fair market value and future rates and taxes”. The proposed purchase price, as stated above, is R8 750 000 (plus VAT). The City claims that this purchase price has been determined by the “comparison of sales method”, in terms of which the sale prices of property in the area are compare for an approximate idea of value.
60. It is difficult to determine whether the City’s proposed purchase price holds up to scrutiny as the City refuses to be transparent about the valuations of the property that it owns. In particular, the City’s 2018 General Valuations Roll records the value of most of the portions of erven 10845 and 10852 at R0.00. In the absence of the City publishing the comparative sales figures it used to determine the value of the property, the public’s ability to hold the City accountable for an irrational disposal is limited.
61. We also believe that the City’s prioritisation of financial income over the potential social and societal value that the site may yield if it were developed into social or affordable housing, is misguided. This is especially concerning in the context of the City’s critical affordable housing crisis. The disposal will generate a significantly diminished income compared to its economic potential, generate limited rates and taxes (compared to the rates and taxes that could be obtained if the site were developed into a mixed-used mixed-income development with social and affordable housing), and does nothing to promote integration or Transit Oriented Development.
62. For these reasons, we contend that the proposed disposal does not yield an adequate economic or community value in light of the City’s stated priorities around spatial transformation, inclusive development in along the Voortrekker Road Corridor Integration Zone and the urgent need for affordable housing. There is no acceptable economic, social, environmental, fiscal argument for why the disposal of well-located public land is acceptable in 2020 in one of the most unequal and spatially fragmented cities in the world.

⁴⁴ See s 14(2)(a) and (b) of the MFMA (own emphasis).

Promoting social inclusivity

63. The land that the City proposes to dispose of to Freshworths CC is located on the border of two segregated areas. To suburbs to the North – Bellville, Boston, Parow East, Vredelust – are predominantly White, while the suburbs to the South – Elsies River, Parow Valley, Ravenshead – are predominantly Coloured. Another key difference is that the areas to the South are much more densely populated – highlighting the inverse densification that characterises the rest of Cape Town.



Adrian Firth's Race Dot Map spatialises 2011 Census data and clearly depicts segregation in the Bellville area – with Voortrekker Road and the train tracks representing a segregating line. Each dot represents approximately 25 people. Green represents Black people, Orange represents Coloured people and Purple represents White people.

64. By developing social or affordable housing at the site, the land could also offer a vital opportunity to promote social inclusivity between communities that have historically been segregated as a result of race and/or class.
65. The revered urban land use specialist, Jane Jacobs, has written about how large tracts of land designated to a particular land use or imposing infrastructure (like train tracks or highways) can function as borders or physical barriers to segregate people. She warns that these “borders divide up cities into pieces” and “can tear a city to tatters”.⁴⁵ Voortrekker Road and the rail to the South of it acts as such a barrier that separates various residential areas that, historically were separated as a result of race.
66. However, the public land that the City proposes disposing of presents a critical opportunity to promote social and economic inclusion. If the City were to pursue social, affordable, mixed-income or student housing on this public land it could encourage and promote spatial transformation in a meaningful way. As Kevin Lynch, Associate Professor of Planning at the Massachusetts Institute of Technology, writes:
- “An edge may be more than simply a dominant barrier if some visual or motion penetration is allowed through it – if it is, as it were structured to some depth with the regions on either side. It then becomes a seam rather than a barrier, a line of exchange along which two areas are sewn together.”⁴⁶
67. Ndifuna Ukwazi strongly urges the City to use the public land that is subject to disposal as a “seam rather than a barrier”. Through using the site for affordable housing, this land can begin to advance reform by pulling together communities rather than using land to entrench barriers and keep them apart.

⁴⁵ J Jacobs, *The Death and Life of Great American Cities*, pp. 257-269.

⁴⁶ See K Lynch, *The Image of the City* (1960). See also Jacobs, *The Death and Life of Great American Cities*, p. 267.

F. CONCLUSION

68. For the reasons outlined above, Ndifuna Ukwazi objects to the City's proposed disposal of portions of erven 10845 and 10852, Bellville to Freshworths CC, by way of sale.
69. Disposing of strategically located City-owned land instead of using it for transformation and redress, to advance spatial justice through the delivery of affordable housing in line with Transit Oriented Development and the City's own inclusive development priorities is irrational and unreasonable. The proposed disposal is unacceptable, especially in the context of a profound housing and segregation crisis faced by the City and the opportunity the parcel of land offers the City to redress spatial inequality in the Bellville area.
70. We contend that the disposal does not comply with the requirements contained in section 14 of the MFMF, namely that the municipal council has decided "on reasonable grounds" that the land "is not needed to provide the minimum level of basic municipal services"; and that the municipal council has considered "the economic and community value to be received in exchange for" the piece of land. In this regard, we assert that
- 70.1 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 sale of the property is in direct conflict with the City's own policies and strategic plans that prioritise integrated development in the area; and
- 70.2 The proposed disposal does not yield an adequate economic or community value in light of the City's stated priorities around spatial transformation, inclusive development in along the Voortrekker Road Corridor Integration Zone and the urgent need for affordable housing.
71. We call on the City to refrain from disposing of the property and commit to investigating the feasibility of using the land for the development of social or affordable housing.

Yours faithfully,

Ndifuna Ukwazi (Per: Michael Clark, Researcher)