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By email: hspolicy.research@capetown.gov.za

To whom it may concern,

**RE: NDIFUNA UKWAZI COMMENT DRAFT INTEGRATED HUMAN SETTLEMENT SECTOR PLAN (March 2022)**

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 well-located affordable housing towards building a more just and equal city.

On 7 February 2022, the City of Cape Town ("the City") published its Draft Integrated Human Settlement Sector Plan as the implementation plan ("the implementation plan") for the Human Settlement Strategy ("strategy") and invited interested parties to comment on the implementation plan. In addition to making comments on the Human Settlement Strategy, Ndifuna Ukwazi has read and considered the draft policy, and makes this submission to the City in accordance with the invitation to submit written comments.

Please see attached our submission on the Draft Integrated Human Settlement Sector Plan.

Yours faithfully,  
Ndifuna Ukwazi

(Per: Michael Clark, Researcher and Robyn Park-Ross, Researcher)

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a not-for-profit trust  
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## **NDIFUNA UKWAZI SUBMISSION ON THE CITY OF CAPE TOWN DRAFT INTEGRATED HUMAN SETTLEMENTS SECTOR PLAN**

### **1. INTRODUCTION**

Ndifuna Ukwazi (“NU”) 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.

Over the last seven years, Ndifuna Ukwazi has been involved in legal, research, advocacy and community organising work around evictions, relocations, rental housing, the allocation of state-subsidised houses, and the promotion of social, transitional and inclusionary housing. We have published several resource guides, research reports and pamphlets on these issues. Ndifuna Ukwazi has also 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. It is from this perspective that Ndifuna Ukwazi has considered the City of Cape Town’s Draft Integrated Human Settlement Sector Plan (“implementation plan”).<sup>1</sup>

While we welcome and are encouraged by the spirit of the City’s Human Settlements Strategy and the resultant Draft Integrated Human Settlement Sector Plan which seems committed to tackling the acute shortage of affordable housing and divisive nature of spatial inequality, we remain deeply concerned about many of the same issues that we raised in our submission to the draft strategy. This, in turn, has led to concerns about the sincerity of the public participation process itself as we feel that the majority of our original comments remain unresolved.

Our submission is structured as follows:

- In part 2 of this submission, makes some general points about the City’s inadequate public participation process in relation to its draft implementation plan;
- In part 3, we briefly outline the concerns from our submission on the City’s Draft Human Settlement Strategy and compare how the Draft Integrated Human Settlement Sector Plan responds to this (if at all).
- In part 4 of this submission, we add additional concerns not outlined in our submission on the draft strategy. In particular, these concerns relate to the City’s shift from

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<sup>1</sup> City of Cape Town, Draft Human Settlements Strategy (2020).

developing top-structures to the provision of serviced sites as its primary form of government-subsidised housing delivery.

## **2. CONCERNS ABOUT THE CITY'S PUBLIC PARTICIPATION PROCESS**

At the outset it is important to note that Ndifuna Ukwazi is deeply concerned with the City's public participation processes around its human settlements policies and plans, particularly the draft strategy and draft implementation plan.

Public participation is an integral part of our constitutional democracy. The principle of participation is a founding value of the South African Constitution.<sup>2</sup> The Constitution expressly provides for public access to and participation in legislative and policy processes, as well as the executive processes of government.<sup>3</sup>

In particular, the Constitution imposes a duty on the City to "encourage" public participation. First, section 195(1)(e) of the Constitution provides among the "basic values and principles governing public administration" that "people's needs must be responded to, and the public must be encouraged to participate in policy-making". Second, section 152(1)(e) of the Constitution provides among the "objectives of local government" that local government should "encourage the involvement of communities and community organisations in the matters of local government". The term "encourage" indicates that local government is held to a higher standard than the legislature, which is required to "facilitate public involvement".<sup>4</sup>

This constitutional duty is affirmed and spelled out section 16 to 21 of the Municipal Systems Act 32 of 2000 ("the Systems Act"). Section 16 of the Systems Act states that municipalities are required to develop a "culture of community participation", while section 17 goes further, by specifying detailed processes and mechanisms that municipalities should adopt. Overall, these provisions affirm that the City is under a constitutional and legislative duty to encourage public participation in its decision-making processes, and that it is obliged to adopt appropriate mechanisms, procedures and processes to enable people to participate.

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<sup>2</sup> See the preamble of the Constitution of the Republic of South Africa, 1996 ("the Constitution"), which lists, as a founding value, "a system of democratic government, to ensure accountability, responsiveness and openness". See T Roux, "Democracy", in S Woolman et al, *Constitutional Law of South Africa* (2 ed, OS, 2006), ch 10.

<sup>3</sup> See ss 57, 59, 70, 72, 74, 116, 118, 160, 195 and 152 of the Constitution. See also S Rosa, "Transformative Constitutionalism in a Democratic Developmental State" in S Liebenberg and G Quinot (eds), *Law and Poverty* (2012), pp. 100-123.

<sup>4</sup> See H Botha, "Representing the Poor: Law, Poverty, and Democracy", in S Liebenberg and G Quinot (eds), *Law and Poverty* (2012), p. 84.

However, it is not enough simply to allow public participation, the City is obliged to take positive steps to ensure that citizens have an effective opportunity to participate in its decision-making processes.<sup>5</sup> This should be done through public education, the provision of information,<sup>6</sup> and various other initiatives to bring people closer to democracy.<sup>7</sup> The City's failure to comply with this obligation could render a policy or programme constitutionally suspect, unlawful and invalid.

The Constitutional Court has held that courts are empowered to test whether the method of public participation adopted by the state afforded the public a reasonable opportunity to participate in the legislative or decision-making process.<sup>8</sup> Whether the method of public participation is reasonable will depend on a range of factors, including the nature and importance of the decision, its impact on the public, and its urgency.<sup>9</sup> We submit that the scale and importance of the City's Draft Integrated Human Settlements Sector Plan and the far-reaching implications that this will have of a significant segment of the population that is dependent of state-subsidised housing, required additional proactive actions from the City to ensure that it provided the necessary information to enable citizens to make meaningful submissions or comments; offer citizens different types of opportunities to make submissions; and to adopt or implement initiatives that could, in other ways, have facilitated greater participation from the public.

These constitutional and legislative provisions also posit a version of participatory democracy that is suspicious of laws or practices which may have the effect of insulating social or political power from mechanisms designed to promote democratic accountability.<sup>10</sup> As Ngcobo J (as he then was) states, public participation

“because of its open and public character acts as a counterweight to secret lobbying and influence peddling. Participatory democracy is of special importance to those who are relatively disempowered in a country like ours where great disparity of wealth and influence exist.”<sup>11</sup>

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<sup>5</sup> *Doctors for Life International v Speaker of the National Assembly* 2006 (6) SA 416 (CC) (“*Doctors for Life*”), paras 108, and 112-117.

<sup>6</sup> See *Poverty Alleviation Network v President of the Republic of South Africa* 2010 (6) BCLR 520 (CC) (“*Poverty Alleviation Network*”), para 33, where the Constitutional Court found that “when a decision is made without consulting the public the result can never be an informed decision”.

<sup>7</sup> *Doctors for Life*, paras 130-134. See also Botha, “Representing the Poor”, in *Law and Poverty*, p. 81.

<sup>8</sup> *Doctors for Life*, paras 118-129, and 145-146. See also Botha, “Representing the Poor”, in *Law and Poverty*, pp. 81-82.

<sup>9</sup> *Doctors for Life*, paras 118-129, and 145-146.

<sup>10</sup> *Doctors for Life*, para 98. See Botha, “Representing the Poor”, in *Law and Poverty*.

<sup>11</sup> *Doctors for Life*, para 115.

In this context, public participation is an important mechanism to promote transparency and accountability. We assert that the City's inadequate engagement with the communities that will be most affected by the draft implementation plan and lack of transparency about its housing demand database and public land database, are particularly inappropriate in a context where concerns have been raised about the contentious relationships between City officials and property developers.<sup>12</sup> By not embracing more wide-ranging public participation processes in relation to its draft implementation plan, the public perceptions about possible corruption or relationships of undue influence could be exacerbated. If the City is serious about fighting corruption, it should strengthen public participation mechanisms, not treat them as a box-ticking exercise.

### **3. UNRESOLVED COMMENTS AND CONCERNS**

In the context of the City's lacking public participation process, we note our dismay at the City's unresponsiveness to our comments on the City's draft human settlements strategy. We consistently provide detailed comments on various policies, plans and by-laws that relate to the rights to adequate housing and equitable access to land. With few exceptions we do not receive even an acknowledgment of receipt, let alone engagement with our comment or feedback on how these submissions were considered. This is the very definition of the limited, tick-box approach to public participation within the City that does not reflect the form of participatory democracy envisioned by the Constitution.

To this end, rather than repeating our previous submissions once again, below we outline a summary of the concerns we put forward in our submission on the draft strategy and compare these comments we have already made to the City's response or position as reflecting in the draft implementation plan.

<b>NU Comment on Draft Human Settlement Strategy</b>	<b>City response to NU comment in the Draft Integrated Human Settlement Sector Plan</b>
<p><b><i>Implementation:</i></b></p> <p>We were concerned about the lack of implementation plan within the draft strategy itself.</p>	<p>This concern has largely been addressed by the release of the draft implementation plan. However, the following concerns remain:</p> <ol style="list-style-type: none"> <li>1. We are concerned that the separation of the draft</li> </ol>

<sup>12</sup> See, for example, C Olver, *A House Divided: The Feud that took Cape Town to the Brink* (2019).

	<p>strategy and draft implementation plan into separate documents with separate public participation processes has significantly delayed the implementation of the City's housing initiatives.</p> <p>2. As the primary plan that is supposed to guide the implementation of all of the City's human settlements projects for the next five-year period, the draft implementation <u>remains too vague. Aside from the lack of detail including timeframes, funding and who will implement many initiatives, the implementation plan also does not outline how the intentions of the strategy and implementation plan will land politically and filter down to the specific bureaucratic decision makers and those involved with enforcement on the ground.</u> We flagged this as a key concern in our comment on the draft strategy, but it deserves repeating that there is a <u>lack of information on what structures will be put into place within the City administration to hold and lead the implementation of this cross-cutting strategy and how all arms of the City will be educated on and made accountable for the implementation.</u></p>
<p><b><i>Inconsistencies with the existing legal and policy framework:</i></b></p> <p>We highlighted that there were multiple inconsistencies between the proposed draft strategy and existing laws, policies and plans that will negatively affect implementation of the draft strategy.</p> <p>In particular, we highlighted the inconsistency between the draft strategy and the</p>	<p>We remain concerned about the City's inability to address these conflicts in its draft implementation plan.</p> <p>The draft implementation plan makes no mention of the MFMA, the MATR or the MCCCTIPP. We believe that this is a significant missed opportunity to align the human settlements strategy and plan with the existing legal framework. It has become clear from our work with the City that the vast majority of the City's departments view public land primarily as an economic asset rather than for its transformative potential. The failure to acknowledge this ideological lens that is applied through asset</p>

<p>Municipal Finance Management Act 56 of 2003 (“MFMA”), the Municipal Asset Transfer Regulations (“MATR”),<sup>13</sup> the Property By-Law, and the City’s Management of Certain of the City of Cape Town’s Immovable Property Policy (“MCCCTIPP”).<sup>14</sup> The draft strategy did not even refer to these pieces of legislation, let alone consider whether these policies are aligned with the City’s proposed strategy.</p> <p>We also noted the conflict between the City’s draft strategy (which claims to embrace informality) and the City of Cape Town By-law Relating to Streets, Public Places and the Prevention of Noise Nuisances (‘the Streets By-Law’),<sup>15</sup> which criminalises homelessness.</p>	<p>management legislation, may have the effect of stunting or hindering the implementation of the draft implementation plan. We therefore again urge the City to take stock of asset management legislation and find ways to reconcile its objectives with the existing legal and policy framework.</p>
<p><b>Affordability:</b></p> <p>We were concerned that:</p> <ol style="list-style-type: none"> <li>1. The use of the broad definition of affordable housing catering to households earning below R22,000 per month did not do enough to encourage deep down reach and</li> </ol>	<ol style="list-style-type: none"> <li>1. The City has not taken on board our recommendations to amend the definition of affordability to prioritise households in the lower income category (households earning below R3,500 per month) and the primary market for social housing (households earning between R1,500 and R7,500 a month) or to provide clear minimum quotas of households from lower income categories to be prioritised. We remain deeply concerned about the</li> </ol>

<sup>13</sup> Published by Government Gazette No. 31346 of 22 August 2008

<sup>14</sup> Policy Number C 54/08/10 of 2010

<sup>15</sup> Provincial Gazette 6469 of 2007

<p>prioritise households in the lower income brackets.</p> <ol style="list-style-type: none"> <li>2. That the City seriously underestimated the role and extent to which the private sector is able to contribute to redressing the housing affordability crisis without the City proactively regulating the sector.</li> <li>3. The strategy would be based on false assumptions and an inaccurate picture of affordability if proper consideration was not given to both the economic impact of the COVID-19 pandemic and resultant shutdowns on people's incomes and consideration for how rates, levies and taxes impact affordability of housing.</li> </ol>	<p>City's refusal to clearly articulate a need to prioritise this deep-down reach. These are the segments of the population that most require state assistance, and without such assistance are likely to slide into homelessness or absolute poverty. The City has an urgent constitutional, legislative and economic duty to assist this segment of society, and the implementation plan should make clear provision for how this segment will be practically assisted.</p> <ol style="list-style-type: none"> <li>2. The implementation plan outlines that the City intends for the private sector to be involved in affordable housing through inclusionary housing policy, mixed market models and micro-developers. While these are all important and long overdue focuses, the full potential of the impact that they could have is not being realised because the City is not urgently and fully implementing these initiatives. For instance, the City has been working on the feasibility study for the inclusionary housing policy since November 2019, a process that international experts in inclusionary housing tell us should take 4 months. These types of delays undermine the City's intentions to harness the potential of the private sector towards affordable housing.</li> <li>3. This has not been addressed in the implementation plan as the City relies on 2019 and 2020 data in its analysis of incomes and housing costs. This means that the City is working off of inaccurate data that does not reflect our current reality. Any plan that is not responsive to the dire economic circumstances that have arisen as a result of the COVID-19 crisis will likely suffer in the implementation stage. The City itself acknowledges in its draft implementation plan that "[a]ccurate and regularly updated income statistics – which remain a challenge for analysis – together with an understanding of housing supply, are crucial to identifying the most appropriate housing interventions for differing income groups." However, the City's failure to ground its implementation plan in the current reality of its</li> </ol>
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	<p>citizens, rather than outdated figures, means that the implementation plan is likely to suffer significantly. Moreover, the implementation plan also does not outline how rates, taxes and levies will be kept affordable for households living in various forms of affordable housing.</p>
<p><b>Location:</b></p> <p>We argued that the draft strategy needed to be amended to include a clear and intentional focus on and definition of ‘well-located’ which is rooted in the historical and contemporary context of spatial inequality, displacement and segregation.</p>	<p>Despite an apparent intention to advance spatial transformation, overall we remain deeply concerned that the implementation plan lacks the specific focus on the provision of housing in well-located areas that would make this intention possible. The lack of focus on well-located areas includes a lack of data, as well lack of proposed housing projects.</p> <p>While social housing has the clearest spatial transformation focus in the implementation plan, we are deeply concerned about the lack of priority given to these projects in terms of the urgency needed to see these projects realised. The social housing projects identified in the implementation plan as being in the ‘planning’ or ‘feasibility’ phases include nine of the eleven sites identified in the <i>City’s Woodstock, Salt River and Inner City Precinct Affordable Housing Prospectus</i> (“the prospectus”), which was announced on 17 July 2017. That these projects are categorised as being in the ‘planning’ or ‘feasibility’ phases after almost five years since the announcement of these projects is deeply concerning and reflects poorly on the City’s commitment to their supposed objective of providing “[h]ousing opportunities that drive spatial transformation and improve access to economic and social opportunities”.<sup>16</sup> In August 2021, Ndifuna ukwazi released a research report, entitled <i><u>Spatial Justice Delayed? Understanding the Obstacles to Social &amp; Transitional Housing in Central Cape Town</u></i>, which highlighted the challenges that have hindered the development of social housing in Woodstock, Salt River and the city centre. In this report,</p>

<sup>16</sup> City of Cape Town. 2021. Draft Human Settlements Strategy.

	<p>we recommended that:</p> <ul style="list-style-type: none"> <li>• The City prioritise the development of well-located affordable housing by offering sustained and active support for affordable housing projects earmarked in well-located areas;</li> <li>• the City dedicate more capacity and resources to the development of affordable housing projects, in particular for the planning and land packaging processes; and</li> <li>• the City review its Key Performance Indicators (KPIs) for officials working in housing, in particular to amend the current KPIs that overemphasise the <i>number</i> of houses delivered over other factors like the <i>affordability</i> and <i>location</i> of the houses delivered.</li> </ul> <p>The report shows that there is an acute lack of sustained support from local government and political leaders in the City of Cape Town to overcome the barriers to the development of well-located affordable housing. While the City has a number of important tools at its disposal which could assist SHIs in developing well-located affordable housing projects, like making public land available at discounted prices, providing financial incentives for the development of affordable housing, simplifying administrative procedures, and stream-lining approvals to reduce delays and costs, the City has not done so.</p> <p>It is also unclear why the City has allocated 3 of the prospectus sites (Pine Road, Dillon Lane and Salt River Market) the status of 'Human Settlement Priority/ Catalytic Project' and not the others. If the City is serious about urgently driving spatial transformation then all of these eleven well-located social housing projects should be seen as priority projects to be urgently implemented.</p>
<p><b>Regulation:</b></p> <p>We argued that the City must commit to investigating the</p>	<p>Despite our recommendation that the City consider additional alternative regulatory measures to formalise</p>

<p>feasibility of a range of alternative regulatory measures to promote well-located affordable housing.</p>	<p>backyarders and inclusionary housing contributions, the only intervention to regulate the private market in the draft implementation plan is the promise that the inclusionary housing policy is being drafted with no indication of when this important policy will be implemented.</p> <p>The City has failed to propose additional means to regulate the private sector that could contribute to spatial justice. We therefore again call on the City to <u>commit to investigating the feasibility of a range of alternative regulatory measures that could be adopted to promote well-located affordable housing (in addition to inclusionary housing and the formalisation of backyarders)</u>. These measures, as mentioned in our comment on the draft strategy, should include, but are not be limited to, <u>rent control, measures to combat gentrification and displacement, regulating various harmful market externalities that diminish available housing stock (such as short-term rentals and Airbnb), instituting rates and rent freezes for vulnerable poor and working class families, or promoting the development of affordable housing through selective development approval processes via bodies such as the MPT; and measures to rapidly activate access to land and/or buildings for housing in the context of a crisis or emergency.</u></p>
<p><b><i>Release of public land for affordable housing and the creation of a consolidated land database:</i></b></p> <p>We strongly encouraged the City to ensure that <i>all</i> City-owned land be incorporated into the consolidated land database and recommended that the City consider adding other</p>	<p>While the City has provided a rough plan for how it plans to reserve, acquire, have land transferred to it and expropriate land for the development of human settlements, these plans are extremely vague. These plans do not clearly articulate the processes or procedures that will be undertaken to ensure that well-located land is unlocked for the development of affordable housing.</p>

<p>public land to the database (given that the draft strategy states that the City will work to leverage public land that is not owned by the City for the development of affordable housing). We noted that the obligations imposed by sections 25(5) and 26 of the Constitution require that the City take positive steps to redress spatial inequality. This entails proactively managing <i>all</i> the City-owned land at its disposal in a manner that prioritises social needs. This means that the City is required to review its largest and most well-located parcels of public land, proactively identify the public land it owns that would be suitable for the development of housing, proactively rezone these parcels of land, negotiate the end of leases or other legal encumbrances, and decline to encumber City land where such land is needed for the development of affordable housing.</p> <p>We noted with concern the lack of specificity in the draft strategy in relation to the criteria for determining whether City land is suitable for the development of affordable housing and the City's Spatial Transformation</p>	<p>Instead the implementation plan makes vague references to existing reservations of land without addressing the deeply flawed existing processes for City disposals (including by way of sale, granting of long-term rights over City-owned land and by way of public auction). In recent years, it has become painfully clear that the different departments within the City are not communicating with each other when it comes to the management of public land. For example, in late 2020 the City almost signed a long-term lease over a plot of land on Newmarket Street that was earmarked for the development of social housing in 2017. This was only averted after Ndifuna Ukwazi objected to the granting of the long-term lease. It should not be the responsibility of civil society organisations to alert the City to how it is misusing public land - this is the City's obligation. As an implementation plan, we would have expected clear processes and procedures to proactively identify well-located public land that is suitable for the development of affordable housing, an indication that clear channels of communications between different departments have been established and a workable outline of the sites that have been identified, will be pursued for developer and clear progress updates about the stage of release each site is at. Without these clear articulation, the City's draft implementation plan is not truly a plan but a vague, unsubstantiated commitment.</p> <p>The City also has not allowed its citizens the opportunity to influence how it identifies its STR. This is an outdated top-down approach that assumes that officials are better suited to determining what the majority of Capetonians need and want, and is likely to stunt the implementation plan. We therefore reiterate the need for the City to bring people into the process of defining the STR criteria.</p> <p>While the City attempts to provide some information about the public land that it has reserved and is in the process of reserving for the development of human settlements projects, there is still a critical lack of transparency from the City about the amount, location</p>
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<p>Rating ("STR"), and urged the City to allow the public to participate in defining this rating.</p> <p>We were also concerned that the draft strategy made no mention of the City's Economic Opportunity and Asset Management Department - the primary City Department responsible for managing, encumbering and disposing of City-owned land. This is a serious oversight on the part of the drafters of the draft strategy and suggests that the Economic Opportunity and Asset Management Department has not been properly consulted prior to the drafting of the strategy. We noted that if this were the case, the strategy would already be dead in the water as buy-in from this department is essential if the objectives of land release for the development of affordable housing is to be realised.</p> <p>Finally, we submitted that the City should recognise that the public has a right to information about public land and what plans the City has for such land including how such land will be used.</p>	<p>and size of the public land the City owns. In Ndifuna Ukwazi's experience, the City has refused to provide access to information about the land it owns, a position that is at odds with the draft strategy's goals around a transparent land release programme. Public land is a public resource, which the City government holds on behalf of the people and as such, the City is required to act with transparency about <i>all</i> the land that it holds. The existing limited disclosures of public land are a far cry from genuine transparency.</p>
<p><b><i>Emergency housing and</i></b></p>	

<p><b><i>unlawful occupation of land:</i></b></p> <p>The City's draft strategy goes to great lengths to explain that the City is 'constrained' by the duty to provide emergency housing to evictees that are rendered homeless as a result of evictions.<sup>17</sup> In particular, the supposedly disruptive effects of court judgments requiring the City to provide alternative accommodation to evictees, funding limitation and managerial constraints were mentioned as key challenges. In our submission, we pointed out that none of these 'constraints' justify the City's failure to comply with a constitutional duty to provide emergency housing. This obligation has been progressively developed through a series of Constitutional Court judgments stretching as far back as the year 2000 - which shows that the City has had 20 years to come to grips with, and adequately plan for, its obligations to provide emergency housing.<sup>18</sup> The <i>Blue Moonlight</i> case, which was</p>	<p>None of these issues were addressed in the City's draft implementation plan. This is likely to mean that the obligation to provide emergency housing to people who are at risk of being rendered homeless as a result of evictions and emergencies will continue to be a pressing issue for the City - especially in the context of the dire economic fallout as a result of the COVID-19 pandemic, which has driven many into homelessness and is likely to lead to a significant increase in evictions of poor and working class families in coming months. The City itself acknowledges elsewhere in the draft implementation plan that its ability to address the acute housing need is limited by accurate data - yet it refuses to collect this data and plan accordingly. Without this, poor and working class communities and civil society organisations have no other choice but to keep dragging the City before the courts to force it to comply with obligations that have been established decades ago.</p> <p>We therefore again reiterate the comments we made in relation to the City's strategy in the context of its implementation plan.</p>
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<sup>17</sup> City of Cape Town, *Draft Human Settlements Strategy*, p. 57.

<sup>18</sup> See, for instance, *Government of the Republic of South Africa and Others v Grootboom and Others* 2001 (1) SA 46 (CC) (*Grootboom*); *President of the Republic of South Africa and Another v Modderklip Boerdery (Pty) Ltd* 2005 (5) SA 3 (CC) (*Modderklip*); *Port Elizabeth Municipality v Various Occupiers* 2005 (1) SA (CC) (*PE Municipality*); *Occupiers of 51 Olivia Road, Berea Township and 197 Main Street, Johannesburg v City of Johannesburg and Others* 2008 (3) 208 (CC) (*Olivia Road*); and *City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties 39 (Pty) Ltd and Another* 2012 (2) SA 104 (CC) (*Blue Moonlight*).

<p>decided back in 2011, places an obligation on municipalities to <u>proactively plan and budget for the provision of emergency housing from their own resources</u>.<sup>19</sup> There is therefore no excuse for the City to not comply with these obligations. Moreover, we submitted that the obligation to provide emergency housing would not be as disruptive <u>if the City took a more proactive approach and planned for the provision of emergency housing needed as a result of evictions and/or unlawful occupation</u>. In particular, the City does not and has not proactively assessed the scale of evictions in Cape Town and the need for emergency housing that this poses. In this context, it seems like no surprise that the City has not been able to adequately plan for the emergency housing need. <u>We recommended that the City gather the relevant data on evictions (both from public and privately owned land, buildings and housing units) to gauge the scale of need for emergency housing and use this data to proactively develop a strategy for the provision of emergency housing</u>. In addition, we</p>	
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<sup>19</sup> *Blue Moonlight*, paras. 67 and 96.

<p><u>recommended that the City set aside its own funding for the development of emergency housing and more actively utilise funding mechanisms at national and provincial level to fund emergency housing.</u></p> <p><u>We also urged the City to prioritise forms of emergency housing that do not result in the displacement of poor and working class communities from well-located areas. This may include increasing the supply of transitional housing in well-located areas.</u></p>	
<p><b><i>Inclusionary housing:</i></b></p> <p>We argued that:</p> <ol style="list-style-type: none"> <li>1. In addition to on-site and fees in lieu options, off-site inclusionary housing must be provided to ensure flexibility.</li> <li>2. The strategy should include basic principles to guide inclusionary housing.</li> <li>3. It must be clearly indicated in the document that inclusionary housing must be retained as affordable in perpetuity and that transparent, fair and dinding regulatory and institutional arrangements must be put in place to</li> </ol>	<p>None of these comments have been addressed by the implementation plan, which remains vague on the details on inclusionary housing and progress in relation to the development of the inclusionary housing policy.</p>

<p>make sure that inclusionary housing is protected in perpetuity.</p>	
<p><b>Social Housing:</b></p> <p>We argued that the strategy and implementation plan should:</p> <ol style="list-style-type: none"> <li>1. Amend an issue on the graphic representing the income bands catered to by various types of housing</li> <li>2. Establish a clear principle of prioritising deeper down reach in social housing,</li> <li>3. In response to the City saying that an alternative entity should be considered for the express purpose of delivering land for social housing, we recommended that the City rather establish or delegate a coordinated department responsible for land management with clear powers and responsibilities to proactively manage all its public land, ensure that it meets its broad obligations to redistribute land and balance the competing interest of different departments who need access to land.</li> </ol>	<ol style="list-style-type: none"> <li>1. The graphic has been amended.</li> <li>2. The City has not created a clear principle to prioritise deeper down reach.</li> <li>3. The implementation plan includes no such plans for a coordinated land management department but also includes no plans on the City's initial idea of an alternative entity for the delivery of land for social housing. The implementation plan does say that the City assists social housing projects with discounted land costs and project packaging but provides no further details.</li> <li>4. There is no indication that land release for social housing will be prioritised.</li> <li>5. The implementation plan is silent on the slow pace of social housing delivery and does not provide concrete solutions of how to expedite these projects.</li> </ol> <p>To add to these concerns and the ones related to social housing outlined in the location section above, we are also concerned that the Canterbury Street site, which appeared in the prospectus, but does not appear anywhere in the implementation plan and assume that this means that this project has been removed from the City's affordable housing pipeline. We're concerned that this has not been publicly articulated or the reasons therefore explained in a public forum.</p> <p>Considering the extremely slow pace of social housing project implementation (as demonstrated by the prospectus sites discussed above), we are also concerned by the lack of new inner city and other well-located projects being added to the pipeline. If it takes the City almost five years to package City-owned land for the release and development of social housing, then the City</p>

<p>4. Land release for well-located social housing should be prioritised.</p> <p>5. The strategy must identify the sheer amount of time it takes to realise these projects as a barrier to its own objectives and provide clear solutions.</p>	<p>urgently needs to proactively identify new sites for social housing development to ensure that there is no backlog to its development processes going forward.</p> <p>Some of the encouraging intentions of the City outlined in the strategy to support social housing through land release, technical support, fast tracking of land use applications and more are not translated into practical action in the implementation plan, presumably meaning that these important forms of support will not happen.</p>
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#### 4. THE SHIFT TO THE PROVISION OF SERVICED SITES

The implementation plan clearly outlines the shift from the provision of state subsidised houses to rapid land release through serviced sites, as envisioned by a directive from the National government in late 2020. The practical implications of this shift are illustrated by the table below which shows a rapid increase in serviced site provision while top structure provision stays the same for the next five years.

*Table 21 : Envisaged BNG housing opportunities for the short term*

Housing Intervention	2022/23		2023/24		2024/25		2025/26		2026/27	
	Serviced site	Top-Structure								
<b>BNG</b>	2 800	2 400	4 000	2 200	7 100	2200	8400	2200	5500	2200

While we understand that this is a directive that has come from the National government and not the City, we outline our concerns about this shift below.

While we understand the motivations of the shift to relate mainly to budget constraints and the need to roll-out housing opportunities at a larger scale and faster, it is not necessarily resource constraints that hamper housing delivery, but many of the underpinning financial instruments and their rigidity. For instance, if it takes an average of eleven years to implement a housing project, we can see no reason the Rapid Land Release Programme will be exempt from the inefficacy of the underlying processes and instruments that have plagued housing delivery to date.

As a directive rather than a change in policy, the public has not had a chance to provide input on this considerable shift in housing provision. Rather than just filtering this directive into its housing plans, the City must insist that the National Department of Human Settlements steer

us all through a rigorous public participation process, where residents and the Cabinet are given space to comment and contribute.

This shift and the implementation plan itself presume that with this new approach, the state is prepared for a more people-centred, consultative and participatory approach. Contrary to this, the current practice has demonstrated that government institutions have been reticent to engage in a meaningful manner.

This shift reflects economist Hernando de Soto's deep influence on South Africa's housing policy. In this logic, housing opportunities provided by the state, in the form of land (or in this instance rapid land release) will spur property markets, leading ultimately to "beneficiaries" ascending a ladder out of poverty. The reality is more complex. Significant evidence exists of a title deed registration backlog in the order of one million subsidised properties, which restricts registered transactions on the properties and the ability to raise finance to develop them. Formal titles may have a potentially detrimental impact on poorer rights holders who are more prone to distress sales, forcing them into deeper poverty and widening inequality.

With the urgent need to spatially transform Cape Town, the location of the rapid release land is a major concern and has perhaps the most significant bearing on De Soto's hypothesis: most state-subsidised housing developments have been on and beyond the urban periphery, often relegating people to poorly serviced areas far from economic opportunities, transport facilities and social amenities. We suspect that rapid land release will be no different. Although it may be correct to say that the model is one of "site and service", we do not know whether or not the Rapid Land Release Programme has been, or will be, informed by the lessons learned in the Independent Development Trust and old provincial site and service schemes in the dying days of apartheid.

Another key informant of this type of shift is the work of John Turner, who emphasised the importance of self-build to restore power and control back to people, particularly the poor and marginalised. Unfortunately, self-build in South Africa has significantly shrunk over the last decade, with less and less money being invested in the "Enhanced People's Housing Process (EPHP)". At this stage we have no evidence that the City's serviced site roll out is being informed by lessons from the EPHP. While the City says it will prioritise EPHP presumably to try to provide some of the capacity and resources necessary to support households in this shift, the implementation plan does not provide any information about housing support centres, construction support, and other technical services that are required but may not be available. Self-build requires a rethink of our construction value chain and has to involve capable community builders and contractors, materials suppliers, compliance issues for contractors, and more. These skills require a significant rethink of how we procure and resource small businesses in the construction sector. Are social movements and small-scale construction companies ready to build houses on serviced sites in Cape Town? We are

concerned that a lack of preparedness could have the unintended consequence that people live in makeshift shacks indefinitely, without having the resources to formalise. This could result in the exact type of informal settlement setting that the City is trying to address. If the City has answers to these questions, they must be included in the implementation plan.

The title deed backlog alerts us to another area of concern about tenure form. How rapid can the programme be if it aims to deliver title? Although important innovations exist with the provision of alternative forms of evidence, the sticking points are whether or not municipalities can recognise and administer letters of occupancy, lease agreements or certificates of occupation in the absence of national land information systems reform. Without this, much effort, and resources will be expended on creating evidence that is quickly outdated, rendering residents in rapid land sites invisible, once again, to the formal land information system and to lenders. The tenure concern is wider than the title backlog – it also relates to the availability of other forms of tenure, such as co-ops, land trusts or other forms of collective ownership. Without making these alternative mechanisms available, the Rapid Land Release Programme runs the risk of deepening poverty and inequality.

The implementation plan must speak to finance for top structure, whether private or public, otherwise we are merely kicking the can and sanctioning residents to poor shelter for an extended period of time.

The planning process also has a bearing on the pace of delivery. Planning and construction approvals are but one of the 60-odd approvals required to initiate a housing project. The implementation plan must outline how the onus of statutory processes will be addressed so that “rapid” release will indeed be rapid.

## **5. CONCLUSION**

Our submission on the City’s draft implementation plan identifies various concerns that we articulated around the City’s public participation process, the City’s inability to address core issues raised in relation to its draft strategy and concerns around the shift from delivering top-structures to serviced stands. These concerns are clearly articulated in our comment above.

We strongly urge the City to rectify these defects in the draft implementation plan as noted in our submission.

**ENDS**

