



8 November 2018

c/o committee@reclaimthecity.org.za

To: Antoinette Markram

Legal Advisor: Corporate Advisory Services, City of Cape Town

By e-mail: Antoinette.Markram@capetown.gov.za

CC: Alderman Ian Neilson, Deputy Executive Mayor

Kevin Jacoby, Executive Director for Finance

Ruby Gelderbloem, Director for Property Management

Lungelo Mbandazayo, City Manager

RE: SALE OF SITE B & YOUR ATTEMPTS TO SHUT DOWN FREEDOM OF SPEECH, MOVEMENT, ASSOCIATION, AND THE RIGHT TO PROTEST

Your letter, dated 30 October, is shameful and has no place in any democratic country. Let us remind you that it was our movement together with our partners and supporters that broke the news on Thursday 13 September 2018 that the City of Cape Town had auctioned Site B to Growthpoint, a company with R122 billion in assets, for up to R140 million less than what the land was worth because the City did not disclose the available rights. This can only be explained through corruption, collusion, or negligence. It is unforgivable and we decided the public deserved clear answers and a just resolution.

So, your letter is an unjustifiable attempt to shut down our freedom of speech, movement and association, and the right to protest. It is a blatant attempt to shield City of Cape Town officials and politicians from public scrutiny. Our Constitution guarantees these rights and freedoms and holds transparency and accountability in high regard when it comes to public administration. We are not intimidated by your empty threats to approach the Courts to silence us. After all, we are not the ones who have lost public funds.

Ms Markram, land is at the heart of transformation of our cities and society. As the City's legal advisor, you will know that it is the City's constitutional obligation to advance equitable access to land and the right to housing. Where land has to be sold, then the City must responsibly guard our public money by at the very least, securing a fair market value

The officials and politicians whom you now represent have failed to transform this city by redistributing our public land equitably to those who are landless and homeless. The City of Cape Town has not built one affordable home in the inner city and surrounds, or in any well-located area since the end of apartheid.

When it comes to public land, and the use of public money, we expect ANYONE responsible for the valuation and the sale and ANYONE who benefitted from the purchase to be accountable to the public. We want to know: How was Site B undervalued? Who knew, and who should be held responsible? What is going to be done about this loss of public funds?

Responding to these questions should not be hard to do or take long. However, we've seen officials and politicians duck and dive. Already it is two months since a forensic investigation was announced. This is exactly the kind of intolerable situation that the Constitution envisions requires peaceful and lawful protest.

On 4 October, we protested at the headquarters of Growthpoint. We wanted to know if the CEO Norbert Sasse knew whether the land was undervalued before the auction and if they would now pay the right price for the land. The officer in charge of public relations met with us and has since responded to say that Growthpoint only became aware of the additional rights after the purchase at auction, but that they still believe that the price paid was fair. We don't believe them but our protest actions produced answers and at least the public knows their position.

On 10 October, we protested at the offices of Nigel Burls who has been contracted to secure the development rights for Site B for Growthpoint. We are aware that he also sits on the Municipal Planning Tribunal which decides on the use of land. We wanted to know how he became aware of the additional rights and if he knew about these additional rights before the auction. He met with us and stated that he only became aware when investigating the site after the purchase. He said he would recuse himself from the decision. Now the public knows.

On 24 October, we protested outside the home of Japie Hugo who was the executive director for spatial planning for the City of Cape Town when the land was given more rights in 1996, and again when the land was sold in 2016. He has also been contracted to secure the development rights for Site B for Growthpoint. We also wanted to know how he became aware of the additional rights and if he knew about these additional rights before the auction. He refused to answer any of our questions. And so, we believe that the forensic investigation that the City has embarked on MUST include an investigation into Japie Hugo's involvement in this matter.

All these demonstrations have involved the presence of law enforcement officers and private security. On almost all the occasions, people responded to our questions on the same day or within a week and we have continued to correspond with them.

You have alleged that we have threatened, victimised and intimidated officials. You have also alleged unlawful and even criminal conduct, on unspecified dates and on the basis of unspecified facts.

Your allegations are vague and without substance and not supported by any facts. We want to know who are the people who were allegedly intimidated and victimised? Where were these alleged acts of intimidation and victimisation? And, in what manner were these people intimidated and victimised?

We believe your letter to be an unlawful attempt to force us to give up our constitutionally protected freedom of speech, movement and association, and the right to protest. We won't accept the City's efforts to shield itself from public scrutiny and accountability and we will insist on our right to protest lawfully and peacefully. Your colleagues and our public officials and politicians may not like being held accountable but this is what democracy requires.

Rather than attempt to shut down Reclaim the City, we demand that you approach the officials and politicians responsible for the valuation and sale of the land.

Ruby Gelderbloem was Director of Property Management and recommended the valuation and the sale of Site B to Council, and Kevin Jacoby, was Executive Director for Finance and CFO at the time of the auction.

Ian Neilson, is Deputy Executive Mayor and was MayCo member for Finance at the time of the auction and responsible for City finances and property management. At first he denied the basic facts, then gave public responses which were false and could not be justified in law. Save for a disputed claim that it was he who initiated the forensic investigation, Ian Nielson has gone silent.

Lungelo Mbandazayo, the City Manager has confirmed that a forensic investigation has been requested, but has not made public the terms of reference, who he has briefed, and when the public can expect this to be completed and if the public will be advised of the result.

While we respect due process, we expect investigations of this nature to be efficient and transparent. We are all too aware of how “process” has been used to protect those in power from scrutiny and accountability, and kick difficult questions into the long grass. And so we demand these individuals and the City answer our questions, now listed below.

Regards,

Deena Bosch, Denver Arendse, Faghmeeda Ling, Karen Hendricks, Jonathan Karelse, Elizabeth Qgoboka, Mpho Diniso, Lindiwe Beyi, Ricky Asher
Chapter Leaders from Woodstock and Sea Point on behalf of Reclaim the City

Questions for Ian Neilson, Kevin Jacoby, and Ruby Gelderbloem

1. Why did you continue to sell our best land and why don't you use well-located public land for housing?
2. Why were the additional rights not disclosed before or at the auction?
3. Did you know that the land had been undervalued? When did you know?
4. What is the plan to get the rest of the money back or secure the return of the land to the public?
5. Considering that you may have lost up to R140 million of public funds, don't you think that the ethical and responsible next step would be for you to resign?

Questions for Lungelo Mbandazayo

1. What are the full terms of reference for the forensic investigation into Site B? What is being investigated? Who is being investigated and by whom?
2. What are the timeframes for the forensic investigation. When will it commence, and when it is expected to be completed?
3. Will the forensic investigation be made public and how this will be done?
4. Given the nature and extent of the allegations and loss of public money, why have no officials or politicians been suspended or relieved of their delegations pending the outcome of the forensic investigation?