



2017-03-09

**CONFIDENTIAL AND WITHOUT PREJUDICE**

To: The South African Human Rights Commission

**Attention: Ms Tammy Carter**

Your ref: WC/1516/0406

Dear Madam

**RE: COMPLAINT AGAINST CITY ON BEHALF OF THE RESIDENTS OF MASIPHUMELELE**

We refer to the above and your letter dated 02 June 2016, for which we thank you. We respond as follows:

1. We submit that in order to respond comprehensively to the content of your letter, we have had to consult with a number of internal departments as well as external stakeholders. It is not proposed to respond to all the allegations in your letter individually but rather to outline the work currently being undertaken by the City for the purposes of upgrading the informal segment of Masiphumelele with a view to demonstrating the City's continued efforts to improve the conditions in the area within the ambit of its resources.
2. We deem it prudent to point out at the outset that one of the City's challenges is that only a portion of the land in the Masiphumelele informal area is on City land, the other portion being on land belong to the Provincial Housing Development Board, Western Cape. For your convenience, we attach hereto copies of Deeds Office searches, and a map of the erven on which Masiphumelele informal settlement is situated.
3. It is acknowledged that the area is overcrowded but while the City does not support the ongoing influx of people into the settlement, it has very little control over the

situation. Residents moving into the area do not seek permission from the City prior to erecting dwellings.

Since this influx and construction often occur at night, it is rarely detected until the dwellings are complete and the families are in occupation. The City does not have the resources to provide continuous monitoring to curb the erection of new dwellings and accordingly already overcrowded areas and overstretched services are placed under further pressure. Aerial photography of the site displays that most of the informal area contains wall-to-wall structures (which translates into a structure count of approximately 2043 structures at September 2016) and the City has, in response to the fire risk created by such extreme densification, attempted to provide access tracks for emergency vehicles and fire breaks by re-blocking the structures. Such attempts have however been completely ignored by the community.

4. The City has a transversal programme of action in place across various directorates to address pressing challenges in the informal segment of Masiphumelele. The City is furthermore part of an Intergovernmental working group that was established to specifically deal with waste and sanitation challenges in Masiphumelele. In this regard, we attach hereto a copy of an Action Matrix developed by representatives of the City, the National Departments of Water and Sanitation, and Environmental Affairs, and the Western Cape Department of Environmental Affairs and Development Planning, which sets out challenges, and actions contemplated by responsible departments in response to those challenges.
5. The City's Water and Sanitation Department is implementing a project to upgrade the sanitation facilities in the area. One of the major challenges is the lack of space for additional toilets. The community were previously offered portable flush toilets (PFTs), but the offer was declined. Accordingly, only full flush toilets are provided and, as stated earlier, there is limited space to accommodate same. The City's asset register as at October 2016 indicates that a total of 241 full flush toilets have been installed in the area. The Water and Sanitation Department cleans and repairs these toilets and ensures that the sewers are functional. It is also engaged in a communal toilet blockage awareness programme, as well as the provision of keys and locks to residents for these facilities. Furthermore, following an extensive public participation process, the construction of two wash houses at the cost of over R1 million is planned.

Building plans have been approved and the construction of the wash houses is anticipated to commence in due course. It is envisioned that at least one facility is to be constructed by end of June 2017.

6. To address the dumping of nightsoil and refuse in the storm water canals, the City's Asset Management and Maintenance Department, in collaboration with City's Storm Water Department conducts regular clean-ups and the situation is monitored by the National Department of Water and Sanitation. On occasion, the storm water network clearing services were extended to cover weekends and public holidays. Due to financial constraints, however, the City is only able to undertake cleaning on average every day of the week, except weekends and public holidays. Work is being done on an ongoing basis to ensure the clearing of silt and sludge from storm water canals. The silt is removed on a quarterly basis using a bob-cat machine, and where resources permit, silt and sludge is removed more frequently. In November 2016, the reeds at the back of the canal were cut by hand, and the canals were cleared of silt and sludge in December 2016 and again during the week of 6 February 2017 to allow for free passage of water into the wetlands.
7. A technical investigation is underway into the feasibility of diverting low flow polluted storm water from the existing canals into the sewer system and the preliminary work in this regard is almost complete. Thus far, it has been determined that covering the storm water canals are not possible given the shallow gradient of the canals as this makes diversion of the canals difficult and extremely costly. The City is therefore moving away from covering the canals and is encouraging the Green and Water Wise-City approach.
8. The City's Water Pollution Control Unit is fully equipped to deal with any water pollution complaints and the City's Environmental Health Department conducts ongoing monitoring and response to health related issues in the area. This department also conducts awareness campaigns, including door to door campaigns, with regard to the impact of pollutants on human and natural systems and erects appropriate warning signs. The last such campaign was conducted on 2 February 2017.
9. The City's Solid Waste Department provides a door to door bag collection service of two bags per dwelling per week in the informal settlement. In the formal area, bags are removed at least two to three days after being filled. In the informal area the

removal of bags and litter picking is done continuously seven days per week. A recent pilot project was the introduction of green bins to assist with containment of solid and liquid waste in the informal areas, the effectiveness of which is to be monitored and measure. In addition, there is a waste drop-off facility alongside the informal area which is freely accessible to all residents. Together with the City's Water Demand Management Unit, the Solid Waste Department has conducted awareness campaigns for Masiphumelele residents relating to storm water awareness and the management of solid and grey water waste.

10. The City's Human Settlements Department has staff dedicated to exploring new parcels of suitable land for housing purposes. The City, however, has to keep all informal settlements within its borders as well as the existing housing list in mind when identifying land for housing purposes and planning developments. Nevertheless, the City is currently in the preliminary stages of the Masiphumelele Phase 4, Stage 1 Breaking New Ground housing development, which commenced in October 2016. It is envisaged that the beneficiaries of this project will include some current residents of the Masiphumelele informal settlement.
11. In view of the actions and interventions set out above, it is submitted that the City is currently doing the best it can within available resources to ameliorate the living conditions in the Masiphumelele informal settlement, which is only one of 436 clusters of informal dwellings within the City boundaries. The City remains committed to employ its best efforts to optimise service delivery in Masiphumelele and all other informal settlements in the metropolitan area.
12. With regard to the request for a public meeting, we advise that we would be amenable to attend an engagement facilitated by the South African Human Rights Commission with selected community representatives for the purpose of the articulation of challenges experienced by the community and their recommended solutions to such challenges.
13. It must be understood and accepted though that the decision-making process within the City, as a sphere of government, is dependent on many elements, and accordingly no expectation must be created that any City representatives present at such meeting can commit to a course of action or make any undertakings without formal approval being granted by the appropriate delegated authority.

14. The City will also continue to engage with the community. We trust that we have provided sufficient information and comment to address the content of the complaint.

Yours faithfully,



**ACHMAT EBRAHIM**  
**CITY MANAGER**

*09.03.2017*

## Deeds Office Property

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NOORDHOEK, 4928, 0 (CAPE TOWN)

## GENERAL INFORMATION

Deeds Office                    CAPE TOWN  
 Date Requested                2017/02/07 09:45  
 Information Source            DEEDS OFFICE  
 Reference

Search in scope

## PROPERTY INFORMATION

Property Type                 ERF  
 Erf Number                    4928  
 Portion Number                0  
 Township                      NOORDHOEK  
 Local Authority                CITY OF CAPE TOWN  
 Registration Division         NOT AVAILABLE  
 Province                        WESTERN CAPE  
 Diagram Deed                 T20498/1960  
 Extent                          10 8830H  
 Previous Description         -  
 LPI Code                        C01600370000492800000

## OWNER INFORMATION

Owner 1 of 1

Company Type                 LOCAL AUTHORITY  
 Name                            CITY OF CAPE TOWN  
 Registration Number  
 Title Deed                     T67077/2004  
 Registration Date             2004/07/13  
 Purchase Price (R)            1  
 Purchase Date                 2004/02/18  
 Share  
 Microfilm Reference         2004 0712 3666  
 Multiple Properties          NO  
 Multiple Owners               NO

## ENDORSEMENTS (6)

#	Document	Institution	Amount (R)	Microfilm
1	I-14943/96-I-25932/9	GT	UNKNOWN	
2	I-17372/1998-I	.	UNKNOWN	
3	I-4966/2016LG	.	UNKNOWN	
4	FARM CP 945/25	.	UNKNOWN	1985 0025 0195
5	FROM CP RD 945/11&14	.	UNKNOWN	
6	REDESIGNATION FROM	REG DIV CAPE RD .NAME POESPASKRAAL NO 945 ,PRTN 25	UNKNOWN	

## HISTORIC DOCUMENTS

No documents to display

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## Deeds Office Property

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NOORDHOEK, 4927, 0 (CAPE TOWN)

## GENERAL INFORMATION

Deeds Office                    CAPE TOWN  
Date Requested                2017/02/07 09:46  
Information Source            DEEDS OFFICE  
Reference                        -



## PROPERTY INFORMATION

Property Type                 ERF  
Erf Number                    4927  
Portion Number                0  
Township                      NOORDHOEK  
Local Authority                CITY OF CAPE TOWN  
Registration Division         NOT AVAILABLE  
Province                        WESTERN CAPE  
Diagram Deed                 T13053/1928  
Extent                         9 9004H  
Previous Description         -  
LPI Code                        C01600370000492700000

## OWNER INFORMATION

Owner 1 of 2

Company Type                 GOVERNMENT  
Name                            PROVINCIAL HOUSING DEVELOPMENT BOARD-WESTERN CAPE  
Registration Number  
Title Deed                      T74304/1994  
Registration Date              1994/09/30  
Purchase Price (R)            SECT 14  
Purchase Date                 -  
Share  
Microfilm Reference         2000 0053 3235  
Multiple Properties            NO  
Multiple Owners               NO

Owner 2 of 2

Company Type                 GOVERNMENT  
Name                            PROVINCIAL HOUSING DEVELOPMENT BOARD-WESTERN CAPE  
Registration Number  
Title Deed                      I-4966/2016LG  
Registration Date              -  
Purchase Price (R)            TRANSFER BY ENDORSEMENT  
Purchase Date                 -  
Share  
Microfilm Reference  
Multiple Properties            NO  
Multiple Owners               NO

## ENDORSEMENTS (9)

#	Document	Institution	Amount (R)	Microfilm
1	I-11161/94C	.	UNKNOWN	
2	I-11998/92-1-49714/8	3T	UNKNOWN	

3	I-14943/96-I	-	UNKNOWN	
4	I-17372/1998-I	-	UNKNOWN	
5	I-4966/2016LG	-	UNKNOWN	
6	FARM CP 945	-	UNKNOWN	1985 0025 0162
7	FROM CP RD 951/3,930	/17	UNKNOWN	
8	PTNS CP RD 945/1-54	-	UNKNOWN	
9	REDESIGNATION FROM	REG DIV CAPE RD ,NAME POESPASKRAAL ,NO 945 ,PRTN 0	UNKNOWN	

**HISTORIC DOCUMENTS**

No documents to display

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4198-RE

CA944-39-RE

CA945-RE

CA945-25

Owner:  
DEPARTMENT OF TRANSPORT  
AND PUBLIC WORKS

Owner:  
CITY OF  
CAPE TOWN

SUNNYDALE

NOORDHOEK



## Update: Masiphumelele, Noordhoek Action Plan Matrix

Date updated: 9 February 2017

### ACTION MATRIX

	CHALLENGE	RESPONSIBLE DEPARTMENT	ACTION DESCRIPTION	TIME FRAMES	RESPONSIBLE OFFICIAL
1	Technical investigation into the feasibility of covering four stormwater canals, downstream of Masemola Road	Informal Settlements, Water and Waste Water: C&SM, TDA: Asset Management & Maintenance TDA: Informal Settlements	C&SM and AM&M District 8 officials have met and discussed the options of closing the canal. Technical investigation including SWOT analyses and cost benefit undertaken. Action put on hold due to mainly technical challenges of design.  Covering of canals will also have the undesired consequence of illegal squatting over the covered area.  Intention is to rather use the stormwater canals as a feature to enhance the future development of the area (in terms of water sensitive urban design principles).	At this stage not feasible due to technical challenges as well as the new Hourmood Road routing	C&SM (Abdulla Parker) TDA: AM&M (Brendan Fortuin) TDA: Informal Settlements (Hilton Scholtz)
2	Technical investigation into the feasibility of diverting polluted low-flow stormwater from the existing Masi-P canals into the sewer	Informal Settlements, Water and Waste Water: C&SM, TDA: Asset Management & Maintenance TDA: Informal Settlements	C&SM and AM&M District 8 officials have met and discussed various options of stormwater treatment/diversion, it was decided to build a low flow stormwater to sewer diversion in one of the canals as a trial and if this proves to be effective, consideration will be given to implementing diversions at the rest of the stormwater canals.  A prelim design has been done by the district office which will form part of the wash house structure, with the possibility of building three more low flow diversions at the other canal sites.	Prelim work is completed with assistance from C&SM (dependant on budget availability & will be incorporated after the W&S ablation facilities)  Low flow diversion constructed at Fish Eagle Park area in early 2016.	C&SM (Abdulla Parker) TDA: AM&M (Brendan Fortuin) TDA: Informal Settlements (Hilton Scholtz)

3	Extend stormwater network cleaning services of daily dumped waste	TDA Asset Management & Maintenance	Ongoing regular cleaning of the stormwater canals in the informal settlement on average area every day, except weekends and public holidays due to (budget constraints), using a combination of contractors, EPWP and where warrants, mechanical methods	Monitored regularly (Cleaning takes on place on average on a daily basis other than weekends and public holidays)	TDA: AM&M (Talcott Percent/Brendon Fortuin)
4	Introduce more frequent cleaning of silt and sludge from stormwater canals	TDA: Asset Management & Maintenance	Ongoing cleaning of the stormwater canals in the informal settlement and quarterly removal of silt using a bob-cat machine. Where resources warrants, increased frequency of silt and sludge removal from canals.	Quarterly (Canals cleaned of silt and sludge by mechanical methods. Ramp and canal walls repaired after recent fire damage. Reeds at back of canals cut by hand Nov 2016 to allow for a free passage of water into the wetlands.	TDA Asset Management & Maintenance (Talcott Percent/Brendon Fortuin)
5	Manage waste removal in the Masip area	Solid Waste	Provide a door-to-door bag service of two bags per dwelling per week. Service solid waste containers twice per week by a contractor.  In the formal areas the bags are removed in 2 or three days from being filled and in the informal areas the removal of bags is ongoing. Ongoing litter picking 7 days a week and illegal dumping removal in and around the settlement area.  Position of containers to be reviewed next to open stormwater canals.  Green bins was introduced during the working week ending 3 February 2017, to assist with containment of solid and liquid waste in the informal areas of Masip. This pilot will be monitored and effectiveness measured.	Ongoing TDA have assisted with this using hand labour to remove litter landing in the wetland	Contractis/Area Cleaning (Kagisho Mithi & Roderick Jacobs)  Collections (Erica Gilbert Eugene Hlongwane)  Collections Eugene Hlongwane)
6	Conduct ongoing responses to complaints relating to pollution and human health challenges	Water Pollution Control and Environmental Health	Respond to alleged incidents of pollution and health complaints within the greater Masiphumelele area.	Ongoing. Last awareness campaign conducted on 2 Feb 2017 and did door-door awareness	Water Pollution Control (Melissa Tang) Environmental Health (Malcolm Cupido, Phumla.Ketani-Poort), Craig Stuurman

7	<p>Conduct awareness campaigns on the impacts of pollutants entering the stormwater system including wetlands</p> <ul style="list-style-type: none"> <li>• Sewer blockage educational awareness campaigns</li> <li>• Decanting of night soil</li> <li>• Solid Waste</li> <li>• Health</li> </ul>	Water Pollution Control Solid Waste Environmental Health	<p>Involves running joint education and awareness campaigns to educate residents in Masiphumelele on proactive actions and interventions, in order to minimise pollution of the stormwater system</p> <p>Conduct awareness campaigns regarding the impacts of pollutants on human and natural ecosystem health, erect additional warning signs</p>	<p>Masi completed 2016</p> <p>Latest campaign first half of February 2017</p> <p>EH will supply signage warning residents about the poor water quality. Awaiting signage</p>	Water Pollution Control (Melissa Tang, Edmund Tiko) Solid Waste (Leander van Oort) Environmental Health (Malcolm Cupido, Phumla Ketani-Poor t)
8	Manage capital projects and maintenance within informal settlements	Water & Sanitation (Informal Settlements Branch)	<p>Ablution facility design is well underway, various internal city &amp; external authorities (DEA&amp;DP) have been engaged for comments &amp; permissions/authorisations. The process to install one facility as a pilot should be concluded in this calendar year for the latest (if not sooner) after the due process is complete.</p> <p>Provide and maintain toilets &amp; stand pipes (ensure these are connected to the sewer system), fix &amp; unblock broken toilets as well as reintroduce the sewer blockage (communal toilets) awareness program, replace missing toilet doors, provide communities with locks and keys to toilets, construct more standpipes/wash areas in the informal area</p>	<p>Wash house plans approved.</p> <p>Construction expected by end of this calendar year for the latest.</p> <p>Ongoing / once-off (Toilets continue to be cleaned &amp; unblocked regularly.</p>	Informal Settlements (Mvolisi Manishomtsho & Llast Mudondo)  Lisa Stapley (Architecture Spatial Planning and Urban Design Department)
9	Housing Projects in MasIP area, including new Phase 4 Formal Housing Area	Human Settlements (New Settlements)	<p>Construct new housing, services and roads for Masiphumelele Phase 4 Housing Project.</p> <p>Plan is to start relocating 227 beneficiaries from Masiphumelele informal dwellings to Phase 4 area from end November 2017. Phased developments and relocation of beneficiaries will be rolled out as housing units become available.</p>	<p>Prelim stage (Phase 1 civil works to be completed July 2017)</p>	Human Settlements, New Settlements (Bernardus Wentzel)
10	New boundary fence within the wetland area	Human Settlements	<p>Construct a fence as a boundary on the perimeter of the informal dwellings to prevent further infilling into the wetland</p>	<p>Stopped (Community not in favour of the fence due to concerns of being trapped during fires)</p>	Human Settlements, Informal Settlements (Johan Gerbet)
11	New extension of Houmoed Road	TDA Infrastructure	Construct new road that will act as a buffer between formal housing, informal housing and the wetland area	<p>Medium term (Delays due to structures having to be relocated outside of the road reserve)</p>	TDA Infrastructure (Mark Doubell/Mark Phinder) TDA Informal Settlements (Hilton Scholtz)

**Note:** Officials from CoCT met with representatives from National Department Water & Sanitation, DEADP (National and Provincial) in 2016. A task team was established and a process of collaboration was agreed on.

**SOUTH AFRICAN HUMAN RIGHTS COMMISSION**

7<sup>th</sup> Floor ABSA Building  
132 Adderley Street  
Cape Town

PO BOX 3563  
CAPETOWN  
8000

Tel.: 021 426 2277  
Fax: 021 426 2875



2 June 2016

To: Glenda Jeffries  
Manager: Corporate Advisory Services  
City of Cape Town  
Per email: [Glenda.Jeffries@capetown.gov.za](mailto:Glenda.Jeffries@capetown.gov.za)

Cc: Mr Gerhard Ras  
Per email: [Gerhard.ras@capetown.gov.za](mailto:Gerhard.ras@capetown.gov.za)

Our ref.: WC/1516/0406

Dear Sir and Madams,

**RE: COMPLAINT ON BEHALF OF THE RESIDENTS OF MASIPHUMELELE**

The South African Human Rights Commission (SAHRC) is an institution established in terms of the Chapter 9 of the Constitution of the Republic of South Africa, 1996 along with its fellow chapter nine institutions, to support constitutional democracy. The SAHRC is mandated to *inter alia* investigate complaints of human rights violations.

The SAHRC has received a complaint from the community of Masiphumelele. In terms of the complaint received the Masiphumelele community alleges that:

1. The area is plagued by overcrowding which has led to frequent and devastating fires which leave thousands of persons including children and the elderly, homeless;
2. Sanitation provision is inadequate and on average, taking into consideration population density there is one toilet per 100 users which is way below the acceptable limits and the official statistics presented by the City of Cape Town regarding sanitation provision in informal settlements;
3. Unsanitary and dangerous storm water canals contain stagnant water, which, due to inadequate sanitation provision, have become a widespread mechanism for the disposal of night soil resulting in the stagnant water having an unacceptably high level of untreated human waste which presents a significant risk to the wellbeing of especially children and the elderly
4. The overcrowding leaves little space for children to play and this results in danger to the children since their play areas, of necessity, are centred around the unhygienic canals;
5. Seepage of contaminated water from the canals affect the informal structures in which the people live and the constant damp poses a further risk to health of the inhabitants of the land closest to the canals;
6. The population density increases constantly due to new people arriving in search of employment opportunities and while the area has grown exponentially in the last approximately 20 years the habitable land area has not increased leading to persons erecting dwellings and structures on water logged reed beds which are being cleared. This poses a health risk not only to the said persons but also to the surrounding environment as the reed beds perform a valuable, natural filtering function of the water which drains into the surrounding wetland and vleis and ultimately into the ocean.
7. Due to limited access to the available sanitation technologies (supplied by the City), community members are obliged to use the surrounding reed beds for their personal needs. This contributes to the pollution of the reed beds and poses a further health and environmental risk.
8. The population density presents a further risk in terms of the spread of disease and is a concern given the conditions in the area which is ripe for various viruses and bacteria to breed.

**SOUTH AFRICAN HUMAN RIGHTS COMMISSION**

7<sup>th</sup> Floor ABSA Building  
132 Adderley Street  
Cape Town

PO BOX 3563  
CAPETOWN  
8000

Tel.: 021 426 2277  
Fax: 021 426 2875



9. The immediately above conditions are exacerbated by the limited access to clean running water for hygiene and other purposes since the communal taps are widely spaced out and lengthy queues make accessing sufficient water difficult.
10. Plans for the development of Masiphumelele fail to take the reality of the population numbers into consideration and plans for formalisation of the informal settlement will not be sufficient to provide for existing and contingent needs for housing;
11. Available land is not being optimally utilised and the community wishes to engage with the City of Cape Town regarding the use of the land and to discuss alternatives for creating higher density housing which will accommodate the existing population and allow for further growth;
12. The community has attempted to engage with the authorities to no avail and service delivery protests are a frequent occurrence. The complaint to the SAHRC is an attempt to divert and use the frustrations of the community constructively as some community members fear that the situation is explosive and can be manipulated to the advantage of the unscrupulous or criminally inclined;
13. The community wishes to engage in dialogue with the City of Cape Town and requests that there be a public hearing in which community members can be heard regarding their specific challenges and can contribute to the solutions for the area;

The community of Masiphumelele alleges that their rights to an environment which is not harmful to their health, housing, access to potable water and sanitation and just administrative action are being violated by the above described conditions and by the decisions taken by the City of Cape Town which affect them directly.

Kindly provide the SAHRC with your written response to the above allegations on or before 4 July 2016 in order to enable the SAHRC to further assess this complaint. Kindly note that, should you require further time to respond to the allegations, or require any further information to enable you to respond to the allegations, you may contact the file handler to request an extension of time or further information, in writing.

Note further that the SAHRC kindly requests that in your response you communicate availability to meet with representatives of the SAHRC in order to discuss this matter and in particular the request of this community for a public hearing.

Direct your comments, queries and response to Ms Tammy Carter, Senior Legal Services Officer telephone number 021 426 2277 or via email [tcarter@sahrc.org.za](mailto:tcarter@sahrc.org.za).

Yours faithfully



**Ms T Carter**  
**Senior Legal Services Officer**



**Mr K Singh**  
**Provincial Manager**