

**REPORT OF THE PUBLIC PROTECTOR IN TERMS OF SECTION 182(1)(b) OF  
THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, 1996 AND  
SECTION 8(1) OF THE PUBLIC PROTECTOR ACT, 1994**



**PUBLIC PROTECTOR  
SOUTH AFRICA**

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**REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF IMPROPER  
CONDUCT AND MALADMINISTRATION BY THE CITY OF CAPE TOWN WITH  
REGARD TO THE HANDLING OF AN APPLICATION FOR THE DISPOSAL OF THE  
SALT RIVER MARKET SITE FOR SOCIAL HOUSING**

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## LIST OF ACRONYMS

IPAC	Immovable Property Adjudication Committee
IVSC	International Valuation Standards Committee
MATR	Municipal Asset Transfer Regulations, Gazette No. 31346, 22 August 2008.
MFMA	Municipal Finance Management Act, 2003 (Act no.56 of 2003)
MMC	Member of the Mayoral Committee
PPSA	Public Protector South Africa
PP Rules	Rules relating to investigations by the Public Protector and Matters Incidental Thereto, 2018, as amended
TDA	Transport and Urban Development Directorate

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## EXECUTIVE SUMMARY

- (i) This is a report of the Public Protector issued in terms of section 182(1)(b) of the Constitution, which empowers the Public Protector to report on any conduct in state affairs that is suspected to be improper or to result in any impropriety or prejudice, and section 8(1) of the Public Protector Act, which provides that the Public Protector may make known the findings, point of view or recommendation of any matter investigated by her.
- (ii) The report relates to an investigation into allegations of improper conduct and maladministration against the Immovable Property Adjudication Committee (IPAC) of the City of Cape Town (the City) related to its alleged obstruction of an application, submitted on 18 May 2018 by the City's Transport and Urban Development Directorate, for the disposal of the Salt River Market site for social housing.
- (iii) The complaint was lodged with the Public Protector by Mr Brett Herron (Complainant), a member of the GOOD Political Party and currently a Member of the National Parliament of South Africa, on 21 June 2019. At the time of lodging the complaint, the Complainant was a member of the Western Cape Provincial Parliament. The Complainant is also a former Member of the Mayoral Committee (MMC) for Transport and Urban Development in the City.
- (iv) In the main, the Complainant alleged that:
  - (a) Several of the erven that make up the site known as the Salt River Market site were identified as suitable for social housing during 2012.
  - (b) The site is located at the Salt River Metrorail station, on two MyCiTi bus routes, and at the confluence of the Voortrekker Road corridor and the Albert road corridor (corridors of employment and more intense development) and the

City's social housing partners were requested to submit expressions of interest for developing the sites for social housing purposes.

- (c) As part of the disposal process, the City's Property Management – Property Intelligence Unit was asked to prepare a valuation for the site. The valuation report was duly prepared on 27 May 2014 and concluded that the market value of the site was R18 million.
- (d) The site was allocated to the accredited social housing company, Communicare, for development.
- (e) The City Council authorised Communicare to prepare a higher-density, mixed-income, affordable housing development for the site. The development was to include social housing, as defined in the Social Housing Act.
- (f) In order to dispose of the site, the disposal had to be considered by the IPAC, which would make recommendations to the Council. The IPAC however referred the report back to the Social Housing officials twice, and would not consider the disposal request.
- (g) He addressed a memorandum, dated 30 July 2018, to the City Manager, in which he raised his concerns that the disposal of the site for social housing was being obstructed by the IPAC. He again wrote to the Mayor and the City Manager on 16 August 2018 about the same matter. Despite assurances by the City Manager that he would address these issues, five (5) sites identified in Salt River and Woodstock remain stuck.
- (h) The Constitution and the Social Housing Act place an obligation on the City to address the housing shortage in the City.
- (i) The Complainant raised further concern that a second valuation report, dated 2 August 2018, prepared by the City's Property Management department for

the Salt River Market site concluded that the market value of the same even had increased to R114 300 000. According to the Complainant, this is a 535% increase in value in a period of four years. The Complainant alleged that this 535% increase contrasts with just a 34% increase in property valuations during the last 3 (three) years, according to the City's general valuations roll for 2018/2019. According to the Complainant, the inflation of land values exceeded the reported increase in the market value of land in Cape Town and the valuations of the Salt River Market site were applied inconsistently.

- (v) Based on the analysis of the complaint, the following issues were considered and investigated:
  - (a) Whether or not the IPAC obstructed the disposal of the Salt River Market site for social housing when it twice sent back an application for the disposal of the site, submitted to it by the City's Transport and Urban Development Directorate on 5 July 2018, and if so, whether its conduct constituted improper conduct and maladministration as envisaged in section 182(1) of the Constitution, 1996 and section 6(4)(a)(i) of the Public Protector Act, 1994, and caused the Complainant to suffer prejudice.
  - (b) Whether or not the City's valuation approach and method were inconsistently applied by the City's appraisers, resulting in a 535% increase in the market value of the Salt River Market site over a period of 4 (four) years, and if so, whether the conduct constituted improper conduct and maladministration as envisaged in section 182(1) of the Constitution, 1996 and section 6(4)(a)(i) of the Public Protector Act, 1994, and caused the Complainant to suffer prejudice.
- (vi) The investigation was conducted in terms of section 182(1) of the Constitution and section 6(4) of the Public Protector Act. It included an analysis of all the relevant documents, application of relevant laws, case law and related prescripts.

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- (vii) On 16 May 2022, a discretionary notice in terms of Rule 42(1) in terms of the Public Protector Rules was issued to the Complainant which advised him of the Public Protector's intention to conclude the complaint by means of a closing report.
- (viii) No response was received from the Complainant by the deadline of 3 June 2022.
- (ix) Having regard to the evidence and regulatory framework determining the standard that the City and its functionaries should have complied with, the following findings are made:
- (a) **Regarding whether or not the City's IPAC obstructed the disposal of the Salt River Market site for social housing when it twice sent back the application for the disposal of the site, submitted to it by the City's Transport and Urban Development Directorate, and if so, whether the conduct constituted improper conduct and maladministration as envisaged in section 182(1) of the Constitution, 1996 and section 6(4)(a)(i) of the Public Protector Act, 1994, and caused the Complainant to suffer prejudice.**
- (aa) The allegation that the City's IPAC obstructed the disposal of the Salt River Market site for social housing when it twice sent back the application for the disposal of the site, submitted to it by the City's Transport and Urban Development Directorate, is **unsubstantiated**.
- (bb) The IPAC returned the report to the TDA for correction on 5 July 2018 and 19 July 2018 because the TDA's report omitted to specify certain essential legal requirements.
- (cc) The report was returned to the TDA on 5 July 2018 because it omitted essential legal requirements stipulated in section 14(2)(b) of the MFMA and

- the Management of Certain of the City of Cape Town's Immovable Property Policy, which justified and permitted the disposal of the Salt River Market site (a capital asset) at below fair market value.
- (dd) The report was again returned to the TDA on 19 July 2018 because the TDA had omitted to include section 13(2)(e) of the MATR in the report, which is one of five mandatory considerations that a municipality must take into account when it intends transferring or disposing of an asset for less than its fair market value. The amended report was also returned to the TDA because the amended report had not been re-submitted to the Legal Compliance section for consideration and approval.
- (ee) On the strength of the aforesaid, the Complainant's allegations that the IPAC refused to entertain the matter without proper justification and that it unreasonably delayed and obstructed the consideration of the disposal of the site to avoid it being disposed of for social housing, are not supported by the facts and applicable legal prescripts.
- (ff) In the circumstances, as the allegation that the City's IPAC obstructed the disposal of the Salt River Market site for social housing when it twice sent back the application for the disposal of the site, submitted to it by the City's Transport and Urban Development Directorate is not substantiated, the conduct of the IPAC does not constitute improper conduct in terms of section 182(1) of the Constitution and maladministration in terms of section 6(4)(a)(i) of the Public Protector Act and therefore did not cause the Complainant to suffer prejudice.
- (b) **Regarding whether or not the City's valuation method was inconsistently applied by the City's appraisers, resulting in a 535% increase in the market value of the property over a period of 4 (four) years, and if so, whether the conduct constituted improper conduct and maladministration as envisaged in section 182(1) of the Constitution, 1996**



**and section 6(4)(a)(i) of the Public Protector Act, 1994, and caused the Complainant to suffer prejudice.**

- (aa) The allegation that the City's valuation method was inconsistently applied by the City's appraisers, resulting in a 535% increase in the market value of the property over a period of 4 (four) years, is **unsubstantiated**.
- (bb) The objective of both the 2014 and 2018 valuation reports was to determine the market value of the Salt River Market site.
- (cc) The same valuation approach in determining the market value of the Salt River Market site was followed in both valuation reports. An element of the approach followed by the City's valuers was to determine the "*highest and best use*" of the Salt River Market site, which is defined by the IVSC as "***the use of an asset that maximises its potential and that is physically possible, legally permissible and financially feasible***". (emphasis added).
- (dd) The 2014 valuation report determined that the "*highest and best use*" of the Salt River Market site at the time, based on the available information, was for either a mixed-use development, including light industrial, or a high-density residential development catering to lower-income buyers.
- (ee) The 2018 valuation report, on the other hand, determined the "*highest and best use*" of the Salt River Market site with reference to a development plan prepared by the social housing company, Communicare, which provided for a high density development comprising social housing units, market priced units, student housing units, retail and basement parking.
- (ff) The Complainant used the market valuation for Erf 17870 Durbanville, to support his allegation of inconsistent conduct by the City, in that, the same valuation approach that was followed in both the 2014 and 2018 Salt River Market site valuations reports, was followed with regard to Erf 17870

Durbanville. The “*highest and best use*” of the subject property was deemed to be for mixed-use development, i.e. an extension of the applicant’s land. The valuation methodology that was used was the “*comparable sales*” method.

- (gg) In all three valuation reports, the valuation methodology that was used to value the land was the “*comparable sales*” method.
- (hh) On the strength of the aforesaid, the factors which influenced the significant difference in the market value of the Salt River site in 2014 and 2015 can be attributed to the information at the disposal of the City’s property valuers at the time, in determining the “*highest and best use*” of the sites, and the application of the comparable sales method, which considered comparable properties’ value-forming characteristics with those of the subject property, namely location, stand size, zoning, encumbrances, etc - as reported in the 2018 Valuation Report, the Salt River area had undergone a revival and that *there are a number of new developments, ... in close proximity to the subject property offering 184 one- and two-bedroom apartments of 55m<sup>2</sup> and 78m<sup>2</sup> respectively. The apartments are affordably priced starting from R1.295 million*”.
- (ii) In the circumstances, the allegation that the City’s valuation approach and method were inconsistently applied by the City’s appraisers, resulting in a 535% increase in the market value of the property over a period of 4 (four) years, is not substantiated, the conduct of the City and its functionaries do not constitute improper conduct in terms of section 182(1) of the Constitution and maladministration in terms of section 6(4)(a)(i)] of the Public Protector Act and therefore did not cause the Complainant to suffer prejudice.

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## **REPORT OF AN INVESTIGATION INTO ALLEGATIONS OF IMPROPER CONDUCT AND MALADMINISTRATION BY THE CITY OF CAPE TOWN WITH REGARD TO THE HANDLING OF AN APPLICATION FOR THE DISPOSAL OF THE SALT RIVER MARKET SITE FOR SOCIAL HOUSING**

### **1. INTRODUCTION**

1.1 This is a report of the Public Protector issued in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 (the Constitution) and section 8(1) of the Public Protector Act, 1994 (the Public Protector Act).

1.2 The report is submitted in terms of sections 8(1) read with section 8(3) of the Public Protector Act, which empowers the Public Protector to make known the findings of an investigation to affected parties (including the Complainant), to note the outcome of the investigation.

1.3 The report is submitted in terms of section 8(1) of the Public Protector Act to the following people:

1.3.1 The Executive Mayor, Mr Geordin Hill-Lewis;

1.3.2 The Council Speaker, Ms Felicity Purchase; and

1.3.3 Mr Brett Herron (Complainant).

1.4 The report relates to an investigation into allegations of improper conduct and maladministration against the Immovable Property Adjudication Committee (IPAC) of the City of Cape Town (the City) relating to its handling of an application for the disposal of the Salt River Market site for social housing, submitted to it on 18 May 2018 by the City's Transport and Urban Development Directorate

## 2. COMPLAINT

- 2.1 The complaint was lodged with the Public Protector by Mr Brett Herron (Complainant), a member of the GOOD Political Party and currently a Member of the National Parliament of South Africa, on 21 June 2019. At the time of lodging the complaint, the Complainant was a member of the Western Cape Provincial Parliament.
- 2.2 The Complainant was a Member of the Mayoral Committee (MMC) for Transport and Urban Development in the City, when the incident took place.
- 2.3 In the main, the Complainant alleged that:
- 2.3.1 Several of the erven that make up the site known as the Salt River Market site were identified as suitable for social housing during 2012.
- 2.3.2 The site is located at the Salt River Metrorail station, on two MyCiTi bus routes, and at the confluence of the Voortrekker Road corridor and the Albert road corridor (corridors of employment and more intense development) and the City's social housing partners were requested to submit expressions of interest for developing the sites for social housing purposes.
- 2.3.3 As part of the disposal process, the City's Property Management – Property Intelligence Unit was asked to prepare a valuation for the site. The valuation report was duly prepared on 27 May 2014 and concluded that the market value of the site was R18 million.
- 2.3.4 The site was allocated to the accredited social housing company, Communicare, for development.

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- 2.3.5 The City Council authorised Communicare to prepare a higher density, mixed income, affordable housing development for the site. The development was to include social housing, as defined in the Social Housing Act.
- 2.3.6 In order to dispose of the site, the disposal had to be considered by the IPAC, which would make recommendations to the Council. The IPAC however referred the report back to the Social Housing officials twice, and would not consider the disposal request.
- 2.3.7 He addressed a memorandum, dated 30 July 2018, to the City Manager, in which he raised his concerns that the disposal of the site for social housing was being obstructed by the IPAC. He again wrote to the Mayor and the City Manager on 16 August 2018 about the same matter. Despite assurances by the City Manager that he would address these issues, five (5) sites identified in Salt River and Woodstock remain stuck.
- 2.3.8 The Constitution and the Social Housing Act place an obligation on the City to address the housing shortage in the City.
- 2.3.9 The Complainant further stated that a second valuation report, dated 2 August 2018, was prepared by the City's Property Management department for the Salt River Market site and concluded that the market value of the same even had increased to R114 300 000. According to the Complainant, this is a 535% increase in value over a period of four years. The Complainant alleged that this 535% increase contrasts with just a 34% increase in property valuations during the last 3 (three) years, according to the City's general valuations roll for 2018/2019. According to the Complainant, the inflation of land values exceeded the reported increase in the market value of land in Cape Town and the valuations of the Salt River Market site were applied inconsistently.

### **3. POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR**

3.1 The investigation was conducted in terms of section 182(1) of the Constitution of the Republic of South Africa, 1996 (the Constitution) which gives the Public Protector the powers to investigate alleged or suspected improper or prejudicial conduct in state affairs, to report on that conduct and to take appropriate remedial action; and in terms of section 6(4) of the Public Protector Act, 23 of 1994 (Public Protector Act), which regulates the manner in which the powers conferred by section 182 of the Constitution may be exercised in respect of government at any level.

3.2 The City is an organ of state and its conduct amounts to conduct in state affairs, and as a result, the Public Protector is satisfied that the complaint falls within her competency to conduct an investigation as envisaged in section 182(1)(a) of the Constitution and sections 6(4) the Public Protector Act.

### **4. ISSUES IDENTIFIED FOR INVESTIGATION**

4.1 Based on the analysis of the complaint, the following issues were identified to inform and focus the investigation:

4.1.1 Whether or not the IPAC obstructed the disposal of the Salt River Market site for social housing when it sent back an application for the disposal of the site submitted to it by the City's Transport and Urban Development Directorate, and if so, whether the conduct constitutes improper conduct and maladministration as envisaged in section 182(1) of the Constitution, 1996 and section 6(4)(a)(i) of the Public Protector Act, 1994, and caused the Complainant to suffer prejudice?

4.1.2 Whether or not the City's valuation method was inconsistently applied by the City's appraisers, resulting in a 535% increase in the market value of the

property over a period of 4 (four) years, and if so, whether the conduct constitutes improper conduct and maladministration as envisaged in section 182(1) of the Constitution, 1996 and section 6(4)(a)(i) of the Public Protector Act, 1994, and caused the Complainant to suffer improper prejudice?

- 4.2 The Public Protector has concluded the investigation and based on the information and evidence obtained during the course thereof, the Public Protector is now in a position to make findings and take appropriate remedial action.
- 4.3 No evidence indicating improper conduct and maladministration by the City and its functionaries was found.

## **5. THE INVESTIGATION**

### **5.1 Methodology**

- 5.1.1 The investigation was conducted in terms of section 182 of the Constitution and sections 6 and 7 of the Public Protector Act.
- 5.1.2 The Public Protector Act confers on the Public Protector the sole discretion to determine how to resolve a dispute of alleged improper conduct or maladministration.

### **5.2 Approach to the investigation**

- 5.2.1 The approach to the investigation included the exchange of documents, analysis of the relevant documentation and consideration and application of the relevant laws, regulatory framework and prescripts.

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- 5.2.2 Like every Public Protector investigation, the investigation was approached using an enquiry process that seeks to find out:
- (a) What happened?
  - (b) What should have happened?
  - (c) Is there a discrepancy between what happened and what should have happened and does that deviation amount to amounts to maladministration, abuse of power or other improper conduct?
  - (d) In the event of a violation, what action should be taken?
- 5.2.3 The question regarding what happened is resolved through a factual enquiry relying on the evidence provided by the parties and independently sourced during the investigation. In this particular case, the factual enquiry principally focused on whether or not the alleged conduct was inconsistent with the applicable prescripts.
- 5.2.4 The enquiry regarding what should have happened, focuses on the law or rules that regulate the standard that should have been met by the City.
- 5.2.5 The enquiry regarding the remedy or remedial action seeks to explore options for redressing the consequences of improper conduct and maladministration; what it would take to remedy the wrong or, where appropriate, to place the Complainant as close as possible to where she/he would have been, but for the improper conduct or maladministration.

### **5.3 The Investigation Process**

- 5.3.1 The format and the procedure followed in conducting the investigation included:
- 5.3.1.1 *Communications by email;*



5.3.1.2 *obtaining records or documents relevant to the investigation which were in the possession or under control of the City.*

5.3.2 The investigation process commenced with correspondence to the City the on 21 September 2020, wherein the municipality was informed of the investigation, the legislation in terms of which the investigation was conducted, as well what information is required and the format thereof.

## **5.4 Key sources of information**

### **5.4.1 Documents and e-mail correspondence**

5.4.1.1 The letter of complaint and supporting documents dated 2 July 2019.

5.4.1.2 An email to the City, dated 21 September 2020, notifying it of the Complainant's allegations and requesting a response thereto, the status of the application and all relevant supporting documents.

5.4.1.3 A letter from the City dated 21 January 2021 and supporting documents.

### **5.4.2 Legislation and other prescripts:**

5.4.2.1 Social Housing Act No. 2008 (Act No. 16 of 2008).

5.4.2.2 The Social Housing Regulations No.34970 (a), Government Gazette, 26 January 2012, prescribed in terms of the Social Housing Act.

5.4.2.3 Local Government: Municipal Finance Management Act (MFMA), 2003 (Act No. 56 of 2003).

5.4.2.4 The Municipal Asset Transfer Regulations (MATR), 2008 (no. R878; effective from 1 September 2008).

5.4.2.5 Management of certain of the City of Cape Town's Immovable Property Policy, approved by Council on 26 August 2010.

#### 5.4.3 **Notice issued in terms of Rule 42(1) of the Public Protector Rules:**

5.4.3.1 On 16 May 2022, a discretionary notice in terms of Rule 42(1) in terms of the Public Protector Rules was issued to the Complainant advising him of the Public Protector's intention to conclude the complaint by means of a closing report and affording him to provide any further evidence pertinent to the matter that may persuade the Public Protector from proceeding with the investigation.

5.4.2.2 No response was received from the Complainant by the deadline of 3 June 2022.

### **6. THE DETERMINATION OF THE ISSUES IN RELATION TO THE EVIDENCE OBTAINED AND CONCLUSIONS MADE WITH REGARD TO THE APPLICABLE LAW AND PRESCRIPTS**

**6.1 Regarding whether or not the City's IPAC obstructed the disposal of the Salt River Market site for social housing when it sent back an application for the disposal of the site, submitted to it by the City's Transport and Urban Development Directorate, and if so, whether the conduct constituted improper conduct and maladministration as envisaged in section 182(1) of the Constitution, 1996 and section 6(4)(a)(i) of the Public Protector Act, 1994, and caused the Complainant to suffer prejudice.**

#### Common cause issues

6.1.1 The Directorate: Human Settlement Implementation, now called Transport and Urban Development Directorate (TDA), prepared and submitted a report to the IPAC, dated 22 May 2018, to consider granting in principle, approval for

the proposed transfer of the Salt River Market sites to Communicare for the purpose of a densified Mixed-Income and Mixed-Use Development with an integrated Social (rental) Housing Component.

- 6.1.2 In the report, the Salt River Market site is described as comprising Erf 10559, 10560, 10561, 10562, 10619, 10621, 15291, 15292, 15293, 15294, 176308, 149336 and 15201, Salt River, Cape Town, being in extent 1.4ha, and was regarded as viable land. The report indicates that the erven are in the Social Housing Restructuring Zones.
- 6.1.3 According to the report, the City is in terms of section 5(c)(i) of the Social Housing Act (the Social Housing Act), 2008 (Act No. 16 of 2008), required to take reasonable steps to provide access to land and buildings for social housing development in designated Restructuring Zones. In order to comply with its responsibilities in terms of section 5 of the Social Housing Act, the TDA requested its social housing partners to submit social housing development proposals for the Salt River Market site.
- 6.1.4 The report reflected that Communicare submitted the best proposals and were recommended by the TDA, and that the City Council, in terms of council resolution C 17/01/16, authorised Communicare to conduct a feasibility study on the identified erven for the purposes of the development of affordable social rental housing, and that it further resolved that should feasibility be confirmed, a further report be submitted to the Council for approval in terms of the requirements of the Municipal Finance Management Act (MFMA), 2003, within a period of 12 months from the date of the approval of the report.
- 6.1.5 The TDA report also referred to the contents of Communicare Salt River Market Development Report (the Development Report), dated 17 November 2017, which stated that on 9 January 2017 Communicare submitted its feasibility report in fulfilment of the Council's resolution – C 17/01/16 - which

*“confirmed the feasibility of the development of the Salt River Market site as high-quality mixed use urban development that integrates social housing and heritage functions within an aesthetically pleasing and environmentally sustainable development”.*

- 6.1.6 In Communicare’s Development Report, dated 17 November 2017 Communicare states that “[A] revised development concept and financial feasibility model were presented to the City on 10 November 2017”; and that “[T]his report serves to confirm the parameters and terms of a high-density development scenario and the request for the final approval and alienation of the Salt River Market site to Communicare for development purposes.”
- 6.1.7 Communicare stated further in the Salt River Market Development Report, regarding the financial viability of the development, that it was agreed in a meeting between the City and Communicare on 10 November 2017 that, to off-set the high development cost, the entire site would be sold at 10% of its market value – the write down of land value was believed to be in line with Regulation 13(2) of the MATR.

Issue in dispute:

- 6.1.8 The issue for determination is whether the disposal of the Salt River Market site for social housing was being obstructed by the IPAC, in that, it would not consider the disposal request, and referred the report back to the Social Housing officials, i.e. the TDA twice for frivolous reasons.

Response from the City Manager:

- 6.1.9 According to the City Manager’s written response of 27 January 2021 to the PPSA investigation team, the allegation that the City’s IPAC obstructed or

would not consider the disposal request was refuted. The response of the City Manager, *inter alia*, indicated that:

- 6.1.9.1 On 28 January 2016 the Council issued a resolution which authorised Communicare to conduct a feasibility study regarding the aforementioned erven for social housing.
- 6.1.9.2 The report relating to the transfer of the Salt River Market Site to Communicare, for mixed-income and mixed-use development with an integrated social housing component, was submitted to IPAC thrice.
- 6.1.9.3 The report was first served before the IPAC on 5 July 2018; and was referred back to the line department (TDA) for the following reasons:
  - (a) A recommendation referring to the fair market value of the asset had to be included; and
  - (b) An explanation of why it should be less than fair market value, i.e. why was it discounted by 10% instead of 25%.
- 6.1.9.4 The report was re-submitted by the TDA for consideration and served before the IPAC a second time on 19 July 2018. The IPAC, however, referred it back again to the TDA, for the following reasons:
  - (a) For the insertion of Regulation 13(2)(e) of the MATR; and
  - (b) The updated report had to be re-submitted and signed by Legal Compliance before being placed on the agenda again.
- 6.1.10 On 30 August 2018, the IPAC considered the report and made recommendations to Council to grant in-principle approval for the transfer of the immovable property.
- 6.1.11 The IPAC's recommendation was considered by the Mayoral Committee (Mayco) on 18 September 2018, and returned to the IPAC for the rectification of the incorrect valuation in the preamble of the IPAC recommendation.

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- 6.1.12 The IPAC re-submitted the report to Mayco on 16 October 2018, and when the recommendation was tabled at Council on 25 October 2018, it was again referred back for further information.
- 6.1.13 After the Council meeting on 25 October 2018, a presentation of the matter was considered at a Special Transport and Urban Development Portfolio Committee meeting on 14 November 2018.
- 6.1.14 On 13 December 2018 the Council granted in-principle approval for the transfer of the immovable property to Communicare, under Council Resolution C22/12/18.

Complainant's version

- 6.1.15 On 9 April 2021 the following comments were received from the Complainant in reply to the City's response:
- 6.1.15.1 The IPAC refused to entertain the matter for the following reasons:
- (a) the report template had changed, this was an immaterial reason for refusing to consider the report.
  - (b) the reports did motivate for the release of the properties at a reduced sales price.
  - (c) An IPAC member questioned whether housing was a City mandate.
  - (d) The IPAC delayed the consideration of the disposal of the site unreasonably for the purpose of avoiding it being disposed of for social housing.
  - (e) The delay was deliberate and this is confirmed by the fact that the DA caucus ultimately refused to adopt the recommendations (made in the report).

6.1.16 The PPSA investigating team considered a relevant email message, dated 20 July 2018, from the Complainant to the Director: Property Management, in which he raised his concern about the report on the Salt River Market site being referred back to the line department for amendment. The Director: Property Management, referred the issue to Mr Richard Wootton, the Manager: Business Integration and Valuation Regulation. On 23 July 2018 Mr Wootton, *inter alia*, replied as follows to the Complainant's email of 20 July 2018:

*"The report was not legally compliant. This is the second time that the report had served before IPAC. The committee had raised a number of deficiencies in the original report and the second report adequately dealt with all the concerns except one.*

*It is a requirement of Regulation 13 of the MATR that council considers 5 factors if it is to transfer land at less than market value. The committee had specifically requested that a better motivation be supplied for the requirement "whether the local community would be better served if the capital asset is transferred at less than its fair market value, as opposed to a transfer of the asset at fair market value". The second report submitted to IPAC had left out this factor completely. The committee had no choice but to refer report back as it was legally deficient.*

*The second reason why the report was sent back was because it had not been signed off by Legal Compliance. The writer had made changes to the report and merely replaced the pages of the original report without re-submitting it to Legal Compliance".*

*Application of the relevant law*

**6.1.17 Social Housing Act, Act 16 of 2008 (the Social Housing Act)**

6.1.17.1 The Social Housing Act creates the legislative framework for the provision of social housing, and it, *inter alia*, lays down the following general principles in section 2 of the Act, namely:

*“(1) In giving priority to the needs of low and medium income households in respect of social housing development, the national, provincial and local spheres of government and social housing institutions must—*

*(a) ensure their respective housing programmes are responsive to local housing demands...”.*

*...*

*(i) promote —*

*(i) an environment which is conducive to the realisation of the roles, responsibilities and obligations by all role-players entering the social housing market;*

*...*

*(xi) an understanding and awareness of social housing processes;*

*(xii) transparency, accountability and efficiency in the administration and management of social housing stock;*

*(xiii) best practices and minimum norms and standards in relation to the delivery and management of social housing...”*

6.1.18 The Social Housing Act sets out the roles and responsibilities of national, provincial and local government. Within the context of this investigation, section 5 stipulates that the roles and responsibilities of local government are, as follows:

*“5. A municipality must, where there is a demand for social housing within its municipal area, as part of the municipality's process of integrated development planning, take all reasonable and necessary steps, within the national and provincial legislative, regulatory and policy framework—*

*(a) to facilitate social housing delivery in its area of jurisdiction;*



- (b) *to encourage the development of new social housing stock and the upgrading of existing stock or the conversion of existing non-residential stock;*
- (c) **to provide access—**
  - (i) **to land and buildings for social housing development in designated restructuring zones;**” (emphasis added)

#### **6.1.19 The Social Housing Regulations No.34970 (a), Government Gazette, 26 January 2012, prescribed in terms of the Social Housing Act.**

6.1.19.1 Regulation 19(1) provides that:

*“In order to comply with the land and service criteria, **the social housing institution responsible for the housing stock during development, must be the registered owner of the land to be utilized for development** or have a minimum lease period of 30 years of the land with the public sector; or (b) secure rights to develop the land through a Land Availability Agreement, with the improved land to be transferred to the social housing institution at a later stage”.* (emphasis added)

#### **6.1.20 Local Government: Municipal Finance Management Act (MFMA), 2003 (Act No. 56 of 2003).**

6.1.20.1 Disposal of the City’s immovable property is regulated by section 14 of the MFMA and Chapter 2 of the MATR.

6.1.20.2 Section 14 prescribes, with regard to the disposal of capital assets<sup>1</sup> by a municipality, that:

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<sup>1</sup> A capital asset is not defined in the MFMA, but is defined in section 1 of the MATR to, inter alia, mean- “(a) any immovable asset such as land, property or buildings ”.

- “(1) A municipality may not transfer ownership as a result of a sale or other transaction or otherwise permanently dispose of a capital asset needed to provide the minimum level of basic municipal services.
- (2) A municipality may transfer ownership or otherwise dispose of a capital asset other than one contemplated in subsection (1), but only after the municipal council, in a meeting open to the public—
- (a) has decided on reasonable grounds that the asset is not needed to provide the minimum level of basic municipal services; and
- (b) **has considered the fair market value of the asset and the economic and community value to be received in exchange for the asset**”. (emphasis added)

#### **6.1.21 The Municipal Asset Transfer Regulations (MATR), 2008 (no. R878; effective from 1 September 2008).**

6.1.21.1 These are regulations prescribed in terms of the MFMA to regulate the disposal of municipal assets.

6.1.21.2 Regulation 3 states that the regulations are governed and must be implemented in accordance with certain ‘Governing principles’, including the:

**“Valuation principle, i.e. the need to attach a value to the transfer or Disposal of a municipal capital asset, in order to ensure that the interests of the municipality or municipal entity and of its stakeholders are not prejudiced by the transfer or disposal.”**

6.1.21.3 Regulation 5 deals with the decision-making process for municipalities regarding the transfer or disposal of non-exempted<sup>2</sup> capital assets, and provides that:

*“(1) A municipality may transfer or dispose of a non-exempted capital asset only after -*

- (a) the accounting officer has in terms of regulation 6 conducted a public participation process to facilitate the determinations a municipal council must make in terms of sections of 14(2)(a) and (b) of the Act; and*
- (b) the municipal council -*
  - (i) has made the determinations required by sections 14(2)(a) and (b); and*
  - (ii) has as a consequence of those determinations approved in principle that the capital asset may be transferred or disposed of”.*

6.1.21.4 In terms of Regulation 5(4):

*“The value of a capital asset must for purposes of sub regulation (3)(b)(i) be determined in accordance with the accounting standards that the municipality is required by legislation to apply in preparing its annual financial statements”.*

6.1.21.5 In terms of Regulation 5(5):

*“In the absence of sufficient guidance in those accounting standards regarding the valuation of capital assets, any of the following valuation methods must be applied:*

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<sup>2</sup> According to section 1 of the MATR a **‘non-exempted capital asset’** means a municipal capital asset which is not exempted by section 14(6) or 90(6) of the Act from the other provisions of that section’.

- (a) *historical cost of the asset, adjusted for accumulated depreciation and any impairment losses as at the proposed date of transfer or disposal;*
- (b) *fair market value of the asset;*
- (c) *depreciated replacement cost of the asset; or*
- (d) *realisable value of the asset”.*

6.1.21.6 Regulation 7 of the MATR, *inter alia*, provides that:

*“The municipal council **must**, when considering any proposed transfer or disposal of a non-exempted capital asset in terms of regulation S(l)(b)(i) and (ii) take into account –*

- (h) ***any comments or representations on the proposed transfer or disposal received from the local community and other interested persons; (emphasis added)***
- (i) ***any written views and recommendations on the proposed transfer or disposal by the National Treasury and the relevant provincial treasury.” (emphasis added)***

6.1.21.7 The TDA report indicated that in regard to Regulation 7(i) the *“proposed transfer was advertised for public comment by the City in terms of Clause 4(3) through annexure E of the Provincial Notice No 5988 and no objections were received”*. A copy of Annexure E was provided to the PPSA investigating team by the City.

6.1.21.8 The requested the written views and recommendations from Provincial and National Treasury and provided them with a copy of the TDA’s report to the IPAC, as confirmed by Annexure H of the TDA’s report, and that no comments were received. A copy of Annexures A and H were provided to the PPSA investigating team by the City.

6.1.21.9 Regulation 13(2) of the MATR provides that:

*“If a municipality or municipal entity on account of the public interest, in particular in relation to the plight of the poor, intends to transfer a non-exempted capital asset for less than its fair market value, the municipality or entity **must**; when considering the proposed transfer, take into account-*

**(e) whether the local community would be better served if the capital asset is transferred at less than its fair market value, as opposed to a transfer of the asset at fair market value”.** (emphasis added)

**6.1.22 Management of certain of the City of Cape Town’s Immovable Property Policy, approved by Council on 26 August 2010.**

6.1.22.1 In terms of clause 15.2 of the Policy:

*“If the City on account of the public interest, particularly in relation to the plight of the poor, intends to dispose of a Non-Exempted Property for less than market value it must take into account the factors specified in Regulation 13(2) of the MATR.”*

6.1.22.2 In terms of clause 15.3 of the Policy:

*“Subject to Council’s Section 14 Determinations and an In Principle Approval in respect of a specific Disposal, (including taking into account the factors specified in Regulation 13(2) of the MATR, and without fettering Council’s powers to determine otherwise), the City shall dispose of social care properties at a purchase price of between 10% and 25% of fair market value subject to a suitable reversionary clause being registered against the title deed of the Property. In the event of the subject property ceasing to be used for the purpose originally intended, reversionary rights are triggered and the City reserves the right to demand compensation*

*equal to the difference between the actual purchase price and the current fair market value of the property, or that the property be transferred into the ownership of the City at no cost to the City.”*

### Conclusion

- 6.1.23 Having considered the facts and the evidence of the matter together with the applicable legal prescripts relevant thereto, it is concluded that:
- 6.1.23.1 In accordance with the general principles laid down in section 2 of the Social Housing Act, the City together with the national and provincial government, must be responsive to local housing demands, enable all role players to realise their roles and responsibilities, promote an understanding and awareness of social housing processes; and promote transparency, accountability and efficiency in the administration and management of social housing stock.
- 6.1.23.2 In terms of section 5 of the Social Housing Act it is the responsibility of the local government to, *inter alia*, facilitate social housing delivery in its area of jurisdiction and provide access to land and buildings for social housing development in designated restructuring zones.
- 6.1.23.3 The Salt River Market site is situated in the Social Housing Restructuring Zones, and hence the City has an obligation to facilitate the disposal of the land for social housing delivery in terms of section 5 of the Social Housing Act.
- 6.1.23.4 On 5 July 2018, the TDA’s report served before the IPAC for the first time for the purpose of recommending to the City Council that the Salt River Market site be transferred to Communicate for the purposes of, *inter alia*, a social housing development.

- 6.1.23.5 The IPAC returned the report to the TDA for correction on 5 July 2018 because the first recommendation omitted to mention two essential conditions of the relevant statutory provision, namely section 14(2)(b) of the MFMA which prescribes that a municipality may only dispose of or transfer capital assets if it has considered the fair market value of the asset and the economic and community value to be received in exchange for the asset.
- 6.1.23.6 The second reason why the report was referred back to the line department, was because the IPAC required the TDA to explain why the property should be transferred for 10% of the fair market value instead of 25%.
- 6.1.23.7 In its amended report, submitted to and considered by the IPAC on 19 July 2018, the TDA elaborated on the 10% discount concerning the properties' fair market value by inserting the following explanation:
- "The Management of Certain of the City of Cape Town's Immovable Property Policy allows for sale the land of (sic) at a discount of between 10 and 25 percent for public interests as explained in Regulation 13(2) below."*
- 6.1.23.8 It is concluded that the reference to the Management of Certain of the City of Cape Town's Immovable Property Policy provides the legal policy authorisation and justification for the sale of municipal property at a discount of between 10 and 25%. The failure to refer to the said policy creates the impression that the City decided on the 10% discount on an arbitrary basis and in the absence of an empowering legal provision.
- 6.1.23.9 The correction required by the IPAC, therefore, concerned two mandatory legal-compliance conditions relating to the transfer of capital assets, i.e. the Salt River Market site, which had been omitted by the TDA in its first report.
- 6.1.23.10 On 19 July 2018, the report was again sent back to the TDA by the IPAC because the TDA had omitted to include section 13(2)(e) of the MATR in

the report. Section 13(2)(e) is one of five mandatory considerations that a municipality must take into account when it intends transferring or disposing of an asset *“for less than its fair market value”*.

6.1.23.11 Another reason why the IPAC returned the report to the TDA on 19 July 2018, was because the amended report had not been signed off by Legal Compliance – As stated in the e-mail of Mr Wootten the report *“...had not been signed off by Legal Compliance. The writer had made changes to the report and merely replaced the pages of the original report without re-submitting it to Legal Compliance”*.

6.1.23.12 Based on the aforesaid evidence it is clear that the TDA’s report was referred back to it twice; because it had omitted to ensure that the report complied with the mandatory requirements of section 14(2)(b) of the MFMA, and Regulations 13(2)(e), did not indicate the legal authority and justification for the sale of municipal property at a discount of between 10 and 25%; and because the amendments had not been endorsed by the City’s Legal Compliance after they had been effected by the TDA and before submission to the IPAC on 18 July 2020.

6.1.23.13 The Complainant’s comments to the aforementioned response of the City Manager of 9 April that the IPAC refused to entertain the matter without proper justification and that the IPAC obstructed the consideration of the disposal of the site for the purpose of avoiding it being disposed of for social housing, is not supported in terms of the response provided by the City Manager and the applicable legal prescripts.

**6.2 Regarding whether or not the City’s valuation method was inconsistently applied by the City’s appraisers, resulting in a 535% increase in the market value of the property over a period of 4 (four) years, and if so, whether the conduct constituted improper and maladministration as envisaged in section 182(1) of the Constitution, 1996 and section**



**6(4)(a)(i) of the Public Protector Act, 1994, and caused the Complainant to suffer improper prejudice?**

Common cause issues:

- 6.2.1 The City's Property Management Directorate, at the request of the TDA, conducted two valuations for the Salt River market site – the first one was conducted on 31 May 2014 and the second valuation was conducted on 2 August 2018.
- 6.2.2 The 2014 valuation comprised 12 (twelve) erven consisting of erven 10559, 10560, 10561, 10562, 10619, 10620, 10621, 15201, 15292, 15293, 15294, and 149336, Cape Town Salt River, which had a total size of 14 607m<sup>2</sup>. The 2018 valuation comprised 8 (eight) erven consisting of erven 10559, 10562, 10619, 10621, 15292, 15294, and 149336, Cape Town Salt River, and comprised the same extent of 14 607m<sup>2</sup>. All the sites belong to the City.
- 6.2.3 The 2014 valuation determined that the market value of the site was R18 million, whereas the 2018 valuation concluded that the market value of the site was R114 300 000.00.

Issue in dispute:

- 6.2.4 The Complainant alleged that the 535% increase in the market value of the Salt River Market Site, over a period of four years, based on the second valuation report prepared by the City's Property Management department was excessive, and that the City had conducted the valuations of the Salt River Market site inconsistently.

Response from the City Manager:

- 6.2.5 According to the City Manager's response to the PPSA investigating team of 27 January 2021, the 535% increase in the market value of the Salt River

Market site, in the second valuation report, was as a result of the increased development rights and bulk services on the site due to the proposed development scheme.

- 6.2.6 The City Manager explained that the first valuation report was commissioned four years prior to the second valuation report, and at the time the site had limited rights and bulk. According to the Valuation Report, dated 7 August 2018, the City's Professional Valuers, inspected the sites on 2 August 2018, and assessed the market value of the site at R114 300,000.00 (excluding VAT).
- 6.2.7 In his comments to the City Manager's response dated 9 April 2021, the Complainant disputed the City Manager's explanation, and remarked that:
- 6.2.7.1 The City Manager's response is not plausible because the valuation process or method used to value the Salt River Market site, was not the same process or method that was used to value other properties which were being considered for disposal by the City.
- 6.2.7.2 In support of his stance, the Complainant referred the PPSA investigating team to the market valuation relating to Erf 17870 Durbanville that was performed by the City on 23 March 2020. According to the Complainant in this case the valuation was done on the basis that the land is zoned "*Public Open Space*", which he states means that the land has no development or use rights and will be of relatively low value unless the City's valuation process takes into account the likely development of the property.
- 6.2.7.3 At the time of the second valuation in 2018 the site did not have those development rights; and by the City Manager's own version the rezoning process only commenced in 2019 and was only approved on 17 April 2019.

6.2.7.4 He, therefore, maintained that the inclusion of development rights in the valuation, that were not yet applied for, or approved, is a deviation from the City's valuation process.

Application of the relevant law

6.2.8 The legal prescripts relating to the transfer or disposal of municipal assets set out under issue 1 in paragraphs 6.1.20 and 6.1.21 *supra* apply mutatis mutandis to issue two.

6.2.9 Both the 2014 and 2018 valuation reports indicate that:

6.2.9.1 The City's professional valuer was required to determine the market value of the subject properties, i.e. the Salt River Market site. The valuation reports define "market value" in terms of the definition used by the International Valuation Standards Committee (IVSC), namely:

*"The estimated amount for which an asset or liability should exchange on the date of valuation between a willing buyer and a willing seller in an arm's length transaction, after proper marketing and where the parties acted knowledgeably, prudently and without compulsion"; and*

6.2.9.2 ***"[I]mplicit in the market value of a property is the notion of highest and best use, which the IVSC defines as:***

***"The most probable use of a property which is physically possible, appropriately justified, legally permissible, financially feasible, and which results in the highest value of the property being valued."***  
(emphasis added)

6.2.9.3 In both the 2014 and 2018 valuation reports, exactly the same physical description of the Salt River Market site is provided. It was also noted that

the zoning of the subject properties comprising the Salt River Market Site in both reports are by and large the same.

- 6.2.9.4 It was, however, noted that since the compilation of the 2014 valuation report the physical description of the general neighbourhood has changed and is described in the 2018 valuation report as having undergone a “*revival in recent years*”. According to the 2018 valuation report:

*“[T]he Salt River area is now seen as the “next big thing” given the rising prices and “growing unaffordability” of the Cape Town CBD and surrounds. The area is basically adjacent to the CBD, but also offers excellent access to the Southern Suburbs and other areas of the city. It is highly sought after for the convenient location, but has its own unique attractions and enjoys the same street-café culture and urban energy of the CBD.*

*To meet the enormous demand for housing in the area, there are a number of new developments for example the SALT, which is a new mixed-use development in close proximity to the subject property offering 184 one- and two-bedroom apartments of 55m<sup>2</sup> and 78m<sup>2</sup> respectively. The apartments are affordably priced starting from R1.295 million.*

*The area is seen as one of the fastest growing house price markets in the city, attributed to the high demand for property to escape the rising traffic and congestion in and around the city. The area also benefits from an excellent central location with quick access to most major motorways in addition to enjoying views of Table Mountain. As an added benefit Salt River falls within the Urban Development Zone (UDZ), which means that investors can take advantage of the UDZ Tax incentives”.*

- 6.2.9.5 **The 2018 valuation report determined the “highest and best use” of the Salt River Market site with reference to a feasibility study done by the social housing company, Communicare, which was based on a**

**development plan for a high-density development comprising social housing units, market priced units, student housing units, retail and basement parking. According to the valuation report, they based their calculations on a total bulk of 38 235m<sup>2</sup>. (emphasis added)**

- 6.2.9.6 In comparison to the 2018 valuation report, the 2014 valuation report gave the following physical description of the general neighbourhood at the time:

*“Salt River is an old established suburb of Cape Town and is located in close proximity to the Cape Town CBD. It enjoys both public road and rail transport, Salt River railway station being the main junction for the southern/northern suburban lines.*

*The area consists of mixed uses which includes commercial, light industrial and a substantial residential component catering mainly for the lower-income group”.*

- 6.2.9.7 The 2014 valuation report determined the “highest and best use” of the Salt River Market site at the time as follows:

***“Given the nature of the surrounding properties and the area in general, and bearing in mind the subject properties shortcomings as well as the fact that it appears that there is no sustainable demand for a fish/fresh-produce market, we are of the opinion that the highest and best use of the subject properties can be for either a mixed use development, including light industrial, or a high-density residential development catering for the lower-income buyers”.*** (emphasis added)

- 6.2.9.8 In both the 2014 and 2018 valuation reports, the valuation methodology that was used to value the land was the “comparable sales method” which entails the following steps:

- 
- (a) Identifying recent sales transactions of similar properties (so-called 'comparables') in the same neighbourhood (or further afield if necessary), for which information is available.
  - (b) Comparing the comparable properties' value-forming characteristics with those of the subject property, namely location, stand size, zoning, encumbrances, etc.
  - (c) Adjusting the sale price of the comparable properties for effluxion of time between their sales dates and valuation date, if necessary.
  - (d) Deduce the value of the subject property after taking due cognisance of all incomparable characteristics and their potential influence on the sales price.

6.2.10 With regard to the market valuation relating to Erf 17870 Durbanville, that was performed by the City on 23 March 2020, it was noted that according to the information provided to the PPSA investigating team by the Complainant, Erf 17870, Durbanville *"... is regarded as non-viable land which only has value to the abutting landowners in light of the fact that it cannot be developed or function as a separate entity"*.

6.2.11 The same valuation approach to determining the market value, which was followed in both the 2014 and 2018 Salt River Market site valuations reports, was followed with regard to Erf 17870 Durbanville. The *"highest and best use"* of the subject property was deemed to be for mixed-use development, i.e. an extension of the applicant's land. In the valuation of this property, the valuation methodology that was used to value the land was the *"comparable sales"* method.

6.2.12 The same valuation approach and valuation methodology were used in regard to all the relevant sites, including Erf 17870, Durbanville, in 2014, 2018 and 2020.

Conclusion:

6.2.13 The significant difference between the 2014 and 2018 valuations, was caused by the information at the disposal of the City's property valuer when the valuation was done in determining the "**highest and best use**" of the sites.

6.2.14 It is noted that in both the 2014 valuation report of the Salt River Market site and that of Erf 17870 Durbanville very little detailed and concrete information was apparently available regarding the subject properties. In addition, erf 17870 Durbanville was regarded as non-viable and only had value to the abutting owners. This was not the case with regard to the Salt River Market site as indicated in the 2018 valuation report.

6.2.15 On the other hand, when the Salt River Market site was valued in 2018, the City had access to a development plan and Communicare's feasibility study on which they could base their calculations.

6.2.16 The approach followed by the City's valuers appears to be consistent with the meaning of "**highest and best use**", namely, "**the use of an asset that maximises its potential and that is physically possible, legally permissible and financially feasible**". (emphasis added).

6.2.17 In line with section 14(2)(b) of the MFMA the City considered the relevant factors set out in Regulation 7 of the MATR and furnished copies of the TDA report to the National and Provincial Treasury for comment. No objections were received from any stakeholders, including the National and Provincial Treasury to the disposal of the sites.

6.2.18 In both the 2014 and 2018 valuation reports the same valuation approach to determining the market value of the Salt River Market Site was followed, and there is no indication that it was inconsistently applied. The justification provided by the City that the 535% increase in the market value of the Salt River Market Site, indicated in the second valuation report, was due to the increased development rights and bulk services on the site as a result of the proposed development scheme, is supported by the contents of the valuation reports.

## 7. FINDINGS

Having regard to the evidence, the regulatory framework determining the standard the City and its functionaries should have complied with, the Public Protector makes the following findings:

**7.1 Regarding whether or not the City's IPAC obstructed the disposal of the Salt River Market site for social housing when it twice sent back the application for the disposal of the site, submitted to it by the City's Transport and Urban Development Directorate, and if so, whether the conduct constituted improper conduct and maladministration as envisaged in section 182(1) of the Constitution, 1996 and section 6(4)(a)(i) of the Public Protector Act, 1994, and caused the Complainant to suffer prejudice.**

7.1.1. The allegation that the City's IPAC obstructed the disposal of the Salt River Market site for social housing when it twice sent back the application for the disposal of the site, submitted to it by the City's Transport and Urban Development Directorate, is **unsubstantiated**.

7.1.2 On 5 July 2018, the TDA's report served before the IPAC for the first time for the purpose of recommending to the City Council that the Salt River Market



site be transferred to Communicate for the purposes of, *inter alia*, a social housing development.

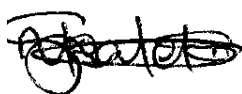
- 7.1.3 The IPAC returned the report to the TDA for correction on 5 July 2018 and 19 July 2018 respectively, because the TDA's report had omitted to specify certain essential legal requirements.
- 7.1.4 The report was returned to the TDA on 5 July 2018 because it omitted essential legal requirements stipulated in section 14(2)(b) of the MFMA and the Management of Certain of the City of Cape Town's Immovable Property Policy, which justified and permitted the disposal of the Salt River Market site (a capital asset) at below fair market value.
- 7.1.5 The report was again returned to the TDA on 19 July 2018 because the TDA had omitted to include section 13(2)(e) of the MATR in the report, which is one of five mandatory considerations that a municipality must take into account when it intends transferring or disposing of an asset for less than its fair market value. The amended report was also returned to the TDA because the amended report had not been re-submitted to the Legal Compliance section for consideration and approval.
- 7.1.6 In light of the aforesaid, the Complainant's allegations that the IPAC refused to entertain the matter without proper justification and that it unreasonably delayed and obstructed the consideration of the disposal of the site for the purpose of avoiding it being disposed of for social housing, is not supported by the facts and applicable legal prescripts.
- 7.1.7 On the strength of the aforesaid, the Complainant's allegations that the IPAC refused to entertain the matter without proper justification and that it unreasonably delayed and obstructed the consideration of the disposal of the site for the purpose of avoiding it being disposed of for social housing, is not supported by the facts and applicable legal prescripts.

- 7.1.8 In the circumstances, as the allegation that the City's IPAC obstructed the disposal of the Salt River Market site for social housing when it twice sent back the application for the disposal of the site, submitted to it by the City's Transport and Urban Development Directorate is not substantiated, the conduct of the IPAC does not constitute improper conduct in terms of section 182(1) of the Constitution and maladministration in terms of section 6(4)(a)(i) of the Public Protector Act and therefore did not cause the Complainant to suffer prejudice.
- 7.2 **Regarding whether or not the City's valuation method was inconsistently applied by the City's appraisers, resulting in a 535% increase in the market value of the property over a period of 4 (four) years, and if so, whether the conduct constituted improper conduct and maladministration as envisaged in section 182(1) of the Constitution, 1996 and section 6(4)(a)(i) of the Public Protector Act, 1994, and caused the Complainant to suffer improper prejudice.**
- 7.2.1 The allegation that the City's valuation method was inconsistently applied by the City's appraisers, resulting in a 535% increase in the market value of the property over a period of 4 (four) years, is **unsubstantiated**.
- 7.2.2 The objective of both the 2014 and 2018 valuation reports was to determine the market value of the Salt River Market site.
- 7.2.3 The same valuation approach in determining the market value of the Salt River Market site was followed in both valuation reports. An element of the approach followed by the City's valuers was to determine the "*highest and best use*" of the Salt River Market site, which is defined by the IVSC as "***the use of an asset that maximises its potential and that is physically possible, legally permissible and financially feasible***". (emphasis added).

- 7.2.4 The 2014 valuation report determined that the “*highest and best use*” of the Salt River Market site at the time, based on the available information, was for either a mixed-use development, including light industrial, or a high-density residential development catering to the lower-income buyers.
- 7.2.5 The 2018 valuation report, on the other hand, determined the “*highest and best use*” of the Salt River Market site with reference to a development plan prepared by the social housing company, Communicare, which provided for a high-density development comprising social housing units, market priced units, student housing units, retail and basement parking.
- 7.2.6 With regard to the market valuation for Erf 17870 Durbanville, the property used by the Complainant to support his allegation of inconsistent conduct of the City, the same valuation approach that was followed in both the 2014 and 2018 Salt River Market site valuations reports, was followed with regard to Erf 17870 Durbanville. The “*highest and best use*” of the subject property was deemed to be for mixed-use development, i.e. an extension of the applicant’s land. The valuation methodology that was used was the “*comparable sales*” method.
- 7.2.7 In all three valuation reports, the valuation methodology that was used to value the land was the “*comparable sales*” method.
- 7.2.8 Based on the evidence and the applicable valuation standards, the factors which influenced the significant difference in the market value of the Salt River site in 2014 and 2015 are attributed to the developmental information at the disposal of the City’s property valuers at the time, in determining the “*highest and best use*” of the sites, and the application of the comparable sales method, which considered comparable properties’ value-forming characteristics with those of the subject property, namely location, stand size, zoning, encumbrances, etc - as reported in the 2018 Valuation Report, the Salt River area had undergone a revival and that *there are a number of new*

*developments, an example being "...the SALT, which is a new mixed-use development in close proximity to the subject property offering 184 one- and two-bedroom apartments of 55m<sup>2</sup> and 78m<sup>2</sup> respectively. The apartments are affordably priced starting from R1.295 million".*

- 7.2.9 In the circumstances, as the allegation that the City's valuation approach and method were inconsistently applied by the City's appraisers, resulting in a 535% increase in the market value of the property over a period of 4 (four) years, is not substantiated, the conduct of the City and its functionaries do not constitute improper conduct in terms of section 182(1) of the Constitution and maladministration in terms of section 6(4)(a)(i) of the Public Protector Act and therefore did not cause the Complainant to suffer prejudice.



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**ADV KHOLEKA GCALEKA**  
**ACTING PUBLIC PROTECTOR OF**  
**THE REPUBLIC OF SOUTH AFRICA**  
**DATE: 30 SEPTEMBER 2022**

*Assisted by: Mr M. Lamula*  
*Provincial Representative: Western Cape*