IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

Case Number: 2025-249378

In the matter between:

THE CITY OF EKURHULENI METROPOLITAN MUNICIPALITY	Applicant
and	
BUSINESS VENTURE INVESTMENTS 900 (PTY) LTD	First Respondent
MINISTER OF PUBLIC WORKS	Second Respondent

NOTICE OF MOTION

KINDLY TAKE NOTICE that the Applicant intends to make an application to this Honourable Court on the date to be determined by the registrar of this court for orders in the following terns:

1. Reviewing and setting aside the 2019 decision of the applicant to expropriate Portion 406 of the farm Driefontein 85 IR; the subsequent gazetting of the expropriation decision; and the expropriation notice taken pursuant to Section 9(3) of the Housing Act 107 of 1997, read with Section 25 of the Constitution

of the Republic of South Africa, and the Expropriation Act 63 of 1975, as invalid, unlawful and unconstitutional.

2. To the extent necessary, condoning the delay in instituting this self-review;

3. Declaring the aforementioned decision and expropriation as invalid and of no force or effect, ab initio.

4. Setting aside the 2019 expropriation.

5. Costs in the event of opposition.

6. Further and /or alternative relief.

TAKE NOTICE FURTHER that the Founding Affidavit deposed to by **NJABULO SIBUSISO TREVOR ZULU** will be used in support of this application.

TAKE NOTICE FURTHER that the Applicant has appointed the email address (sibusiso@lusengainc.coza) of its attorneys as the address at which it will accept notice and service of all process in these proceedings

TAKE NOTICE FURTHER that the applicant will in its capacity as decision maker of the impugned decision dispatch in terms of Rule 53(1) the record relevant to this

review, and within 10 days thereafter deliver a supplementary founding affidavit or a notice that it stands by its notice of motion.

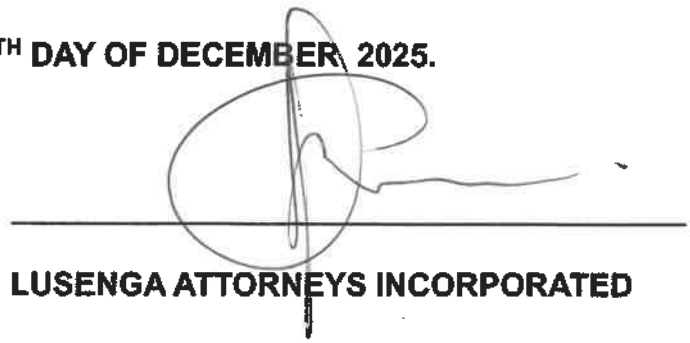
TAKE NOTICE FURTHER that if any of the Respondents intend opposing this application, it is required:

(a) to deliver notice of intention to oppose within ten (10) days of receipt of this Application, and appoint in such notice the address or email at which it will accept all service and process in this application;

(b) file within thirty days after receipt of the applicant's supplementary founding affidavit or notice that the applicant stands by its notice of motion an answering affidavit in opposition thereof.

KINDLY ENROLL THE MATTER FOR HEARING ACCORDINGLY.

DATED AT SANDTON ON THE 19TH DAY OF DECEMBER 2025.



LUSENGA ATTORNEYS INCORPORATED

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TO: **THE REGISTRAR OF THE ABOVE HONOURABLE COURT**

JOHANNESBURG

AND TO: **MACROBERT INCORPORATED**

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AND TO: **MINISTER OF PUBLIC WORKS**

CGO Building,

Cnr. Bosman and Madiba Street,

Pretoria

C/O Office of the State Attorney: Pretoria,

316 Thabo Sehume Street,

Pretoria,

Gauteng Province.

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, JOHANNESBURG

CASE NO:2025-249378

In the matter between

CITY OF EKURHULENI METROPOLITAN MUNICIPALITY Applicant

and

BUSINESS VENTURE INVESTMENTS 900 (PTY) LTD First Respondent

MINISTER OF PUBLIC WORKS Second Respondent

FOUNDING AFFIDAVIT

I, the undersigned,

NJABULO SIBUSISO TREVOR ZULU

do hereby make oath and state that:

M

1. I am an adult male and the Divisional Head: Specialised Legal, By-Law Drafting and SCM Support in the Corporate Legal Services Department of the Applicant, the City of Ekurhuleni Metropolitan Municipality, which has its principal place of business at OR Tambo Administrative Precinct, Corner Cross and Rose Streets, Germiston.

2. I am duly authorised to act herein on behalf of the City of Ekurhuleni Metropolitan Municipality in terms of my delegation and to depose to this affidavit on the Municipality's behalf, as per the following duly resolved documents:

   a. The Council of the Municipality resolved under item A-CORP (09-2017) OC to adopt a "System of Delegations". A copy of the said Resolution is attached hereto as annexure **"COE1"**.

   b. The sub-delegation of authority from the Delegated Powers of the City Manager to the HOD: Corporate Legal Services and officials in the Department. A copy of the sub-delegation of authority is attached hereto as annexure **"COE2"**.

3. Due to my position and the powers and functions delegated to me, I am duly authorised to depose to and launch this application on behalf of the Applicant.

A. INTRODUCTION

4. This application is a self-review by the applicant, in its capacity as an organ of state. I am advised that an organ of state is obliged in law to approach the court and set aside its own decision which was taken in contravention of enabling legislation and the constitution. It is against this backdrop that the applicant is approaching this court to review and set aside its 2019 expropriation decision, the details of which are fully set out below.

5. I am also advised that a self-review of this nature is permissible under legality and rationality as postulated in section 1(c), read with section 7 of the Constitution of the Republic of South Africa ("the Constitution"). This application is premised on legality and rationality, which are the antecedents of the rule of law, which oblige an organ of state, such as the applicant, to exercise only powers conferred on it by statute and the constitution, and to act within the four corners of that enabling legislation.

6. I demonstrate in this affidavit below that the applicant, through its council acted outside its enabling powers, thus ultra vires when it expropriated the first respondent's farm, outside jurisdictional facts, irrationally and unlawfully. The expropriation decision, as I demonstrate below, was invalid *ab initio*. Whilst the expropriation decision was taken by the applicant through its council, whose term ended in 2021, the current council is nevertheless bound by the expropriation decision taken by its predecessor, despite its unlawfulness, unless the decision is set aside on review.

7. On 4 December 2025, the City of Ekurhuleni's Municipal Council ("**Council**"), after considering reports by environmental experts as well as the Gauteng Department of Agriculture and Rural Development ("**GDARD**"), passed a resolution as follows:

a. The decision to expropriate the land at Portion 406 of the farm Driefontein 85 was invalid, owing to the decision being taken without due consideration of essential facts, as well as a factual and material error regarding the land's suitability for housing.

b. As a result of the above error, the Municipality must institute a self-review application to set aside the expropriation of the land in this Honourable Court.

c. This application is brought as a result of that resolution.

d. The resolution of the Council is attached as annexure **"COE3"**.

4. The facts contained in this affidavit are both true and correct and within my personal knowledge, save where the contrary appears from the context. Some of the facts are based on documents in my possession and sources that I have read and understood, as well as information provided by Municipality ("City") officials. To the best of my knowledge, the information provided is accurate and correct. Additional confirmatory affidavits will be obtained where it is necessary.

5. Any submissions of a legal nature contained hereunder are based on the advice of the Applicant's appointed legal representatives. I have considered same and verily believe such advice to be true and correct.

The Record and the Applicant's Duty of Candour

6. This application is brought as a self-review under the principle of legality. The Applicant accordingly approaches the Court with the required degree of candour and transparency.

7. The Rule 53 record which will be filed by the applicant's attorneys of record in terms of rule 53(1) of the rules of court consists of the documentation that served before Council at the time the impugned decisions were taken, including reports motivating the expropriation, as well as subsequent expert and environmental reports that were not before Council but which are now known to the Applicant.

8. To the extent that certain documents ordinarily forming part of a complete decision-making record are absent, this is addressed openly in this affidavit. The Applicant does not seek to defend or supplement the original decision on new grounds, but rather places the full factual position before the Court so that the legality or otherwise of the expropriation may be properly assessed.

9. The documents filed in support of this application consist of the Rule 53 record, which contains two volumes: the first volume is the primary decision-making

material relevant to the expropriation, and the second volume contains supplementary material demonstrating the objective factors that inform the unlawful nature of the decision. The affidavit is further supported by annexures relevant to these proceedings.

B. THE PARTIES

10. The Applicant is the **CITY OF EKURHULENI METROPOLITAN MUNICIPALITY**, a municipality as contemplated in Section 2 of the Local Government Municipal Systems Act, 2000, with its principal office located at the Corner of Cross and Roses Streets, Germiston.

11. The First Respondent is **BUSINESS VENTURE INVESTMENTS 900 (PTY) LTD.**, a company duly incorporated and registered in terms of the company laws of the Republic of South Africa, with its registered address at Ad Outpost Building, 54 Maxwell Drive, Woodmead, Gauteng.

12. The Second Respondent is the **MINISTER OF PUBLIC WORKS**, an office currently held by Mr. Dean Macpherson. The Minister is the executive authority responsible for the national Department of Public Works, with offices situated at the CGO Building, Cnr. Bosman and Madiba Street, Pretoria, c/o Office of the State Attorney: Pretoria, situated at 316 Thabo Sehume Street, Pretoria. The Second Respondent is cited due to the potential interest of the State in the expropriation process.

13. I will, in this affidavit, interchangeably refer to the Applicant as the **"City/Municipality"**, the First Respondent as **"Business Venture"** and the Second Respondent as **"Public Works"**.

C. JURISDICTION

14. This application is brought as a legality review in terms of the Constitution. This Honourable Court has jurisdiction not merely because the cause of action arose within its area, but because it is constitutionally empowered to review and set aside unlawful exercises of public power under the principle of legality, as an incident of section 1(c) of the Constitution and section 172(1)(a). Furthermore, this Court is empowered to hear self-review applications in terms of the legality principle.

15. The decisions and conduct impugned constitute administrative action in the broader constitutional sense, though the Applicant does not rely on the Promotion of Administrative Justice Act 3 of 2000 (**"PAJA"**). This is because self-reviews are only permissible under legality principle in South African jurisprudence.

16. In summary, I am advised this Honourable Court has jurisdiction to entertain this application by virtue of:

    a. Section 172(1)(a) of the Constitution, which empowers the Court to declare conduct inconsistent with the Constitution to be invalid;

b. Its inherent constitutional jurisdiction over legality reviews;

c. The relief sought, which includes orders of invalidity and just and equitable remedies;

d. The fact that the causes of action arose within its geographical jurisdiction, and the Respondents are either domiciled or cited for relief within the area of jurisdiction of this Honourable Court.

D. LOCUS STANDI AND DUTY TO APPROACH THE COURT

17. The Applicant is the City of Ekurhuleni Metropolitan Municipality, an organ of state.

18. The City performs its functions in terms of the Constitution and as contemplated by the Local Government Municipal Systems Act, 2000. The City is constitutionally obliged under Sections 41, 152, and 195 of the Constitution to act lawfully and in the public interest. It accordingly has a direct and substantial legal interest in the validity of decisions taken by its structures and officials, including expropriation.

19. I am advised that the Constitutional Court has confirmed that organs of state may bring self-review applications where the decisions taken are evidently unlawful, irrational, or taken in error. This duty arises from the principle of legality.

20. The expropriation decision that is the subject of this litigation was unlawful from the outset, as it was taken without the necessary jurisdictional facts being present, in error, and irrationally. It is therefore incumbent on the City, as a responsible organ of state, to correct its own conduct through this Honourable Court.

Municipal Governance and Decision-Making Framework

21. The Applicant is a constitutional organ of state and a juristic person that exercises public power through a structured system of political oversight and administrative implementation. Decision-making authority within the Municipality is not vested in a single individual but is distributed between the Municipal Council, its committees, and the municipal administration, each acting within the confines of statutory powers and delegated authority.

22. The Municipal Council is responsible for taking high-level policy and strategic resolutions, including decisions of the nature implicated in this application. The implementation, review, and operational consequences of such resolutions are executed through the municipal administration, subject to the Municipal Systems Act, the MFMA, applicable delegations, and internal governance processes.

23. Importantly, the composition of the Municipal Council is not static. Councillors and political office-bearers change over time as a result of electoral processes and changes in administration. The Applicant accordingly approaches this

review as an institutional corrective process, rather than an inquiry into the conduct or intentions of any particular former office bearers.

E. PURPOSE OF THIS APPLICATION

25. This is a self-review application brought under the principle of legality, to review and set aside the City's own decision to expropriate Portion 406 of the farm Driefontein 85, situated in registration division I.R., Gauteng, measuring approximately 33.6847 ha in extent as indicated on SG Diagram No. 6038/2004 on Deed Transfer No. T165522/05, for a public purpose of developing human settlement on the property.

26. Consequent to the launch of this review, which goes to the heart of the First Respondent's claim for compensation, the Applicant will seek a stay of the trial proceedings under case number 8866/2021, scheduled for 02 February 2026, pending the final determination of this review.

27. The Applicant seeks this Honourable Court to declare the aforementioned decision as invalid and of no force or effect.

F. FACTUAL BACKGROUND

The Expropriation

28. A decision was taken by the City to expropriate land in order to fulfil its constitutional and statutory obligation to provide housing. On 06 February 2019, a notice of expropriation was published in the Provincial Gazette indicating that

Portion 406 of the farm Driefontein 85 was expropriated under Section 9(3) of the Housing Act. The notice forms part of volume 1 of the record and is marked as COE-R1.

29. At the time of the decision, the City assumed that the land being expropriated was suitable for the development of housing. This assumption has since been proven to be incorrect, constituting a material error of fact. The land is unoccupied, and there was no agreement between the parties on compensation.

Emergence of Adverse Information and Internal Process

30. After the expropriation had been effected, adverse expert assessments and regulatory correspondence emerged, including from the relevant provincial authorities, which cast serious doubt on the suitability of the property for the intended purpose.

31. Once this information became available, it required internal verification, legal assessment, and escalation through the Applicant's governance structures. These processes are governed by statute, internal delegations, and principles of responsible municipal administration. During this period, the Applicant was required to assess the implications of the new information, including its legal, financial, and administrative consequences.

Constitutional and Statutory Framework

32. The power that the City has in terms of the Housing Act is subject to strict jurisdictional facts. The City's power to expropriate derives from section 9(3) of the Housing Act 107 of 1997 (**"the Housing Act"**).

33. Section 25(2) of the Constitution provides that property may be expropriated for a public purpose or in the public interest.

34. Section 24 of the Constitution guarantees an environment that is not harmful to health.

35. The National Environmental Management Act 107 of 1998 (**"NEMA"**) does not allow for development without environmental authorisation where, as in the current instance, the land contains wetlands and/or geotechnical risks to the environment and people.

The Confirmation of Environmental Unsuitability

36. In pursuit of its plan to build homes, the City submitted an application for the establishment of a township and authorisation to the Gauteng Department of Agriculture and Rural Development (**"GDARD"**). This application is part of the record at volume 2 and marked as COE-R2.

37. An application for the establishment of a township on the property was approved by the City, after initial assessments and valuation of the property were conducted.

38. The Municipality's position at the time was therefore not that the land was optimal or ideal, but that its constraints were potentially manageable within the framework of applicable regulatory approvals. The mere existence of constraints was not understood to render the land wholly unusable or devoid of public housing potential.

39. That understanding changed materially and decisively only once GDARD, exercising its statutory mandate and specialist authority, issued a definitive refusal which rendered the proposed development legally impermissible. GDARD's position was not that development would be costly or complex, but that it was not capable of authorisation at all.

40. On 17 May 2025, GDARD refused the environmental authorisation (Ref No. GAUT 002/23-24/E3804). The application was rejected on grounds which include:

    a. A significant portion of the site is impacted by a wetland, which exhibits typical wetland characteristics, with the soil containing redoximorphic features within 50cm of the soil profile.

    b. The development will have an impact on the ecological services provided by wetland systems as both a water purifier and catchment system. The wetland needs to be protected.

c. Detection of waterlogged systems on site, which would impact construction and operations. The impact cannot be mitigated to acceptable levels.

d. The Geotechnical report indicates highly possible shallow/perched groundwater tables.

e. An informal mining site exists adjacent to the property and this poses a serious risk to the stability beneath the surface.

f. The data in the geotechnical report further supported the true extent of the wetland over a wider area than what had been delineated by the wetland specialist.

g. There is a risk that the area may have a bad odour, which could ultimately lead to serious health risks for housing development purposes.

h. A copy of the GDARD refusal report is part of volume 2 of the record and is marked as COE-R3.

36. The land is geotechnically unstable and unsuitable for human settlement.

37. The Applicant held its Council meeting on 04 December 2025, wherein a resolution was reached after consideration of:

a. The different environmental reports,

b. The constraints on the land,

c. The cost to the public coffers as well as the refusal by GDARD for the establishment of the township, and

d. The amount sought in compensated for the expropriated by the First Respondent during the court mandated mediation in terms of Rule 40A of the Uniform Rules of Court.

38. The City's Council resolved that the decision taken on 27 September 2018 to expropriate the land must be rescinded.

The Original Expropriation Decision

39. The decision to expropriate the property was made by a prior Municipal Council based on the information available to it at the time. Assumptions were made regarding the suitability of the property for the stated public purpose.

40. It is necessary to clarify that, at the time of the expropriation, the Municipality was not under the impression that the property was entirely unconstrained or free from environmental or geotechnical challenges. On the contrary, certain limitations and risks associated with the land were known and formed part of the Municipality's contemporaneous assessment.

41. The unlawfulness of the expropriation arises not from any suggestion of mala fides or defiance of known facts at the time, but from the absence of material jurisdictional facts necessary to support the exercise of the power of expropriation. The decision was thus tainted by a material error of fact and a failure to appreciate information that was only clarified through subsequent expert and regulatory engagement with GDARD.

G. DELAY AND REASONABLENESS

42. I will deal next with the issue of the delay in instituting this review application.

43. The Applicant accepts that the decision to expropriate Portion 406 of the Farm Driefontein 85 IR was implemented during or about February 2019, and that this application has been instituted several years thereafter.

44. This application is, however, brought under the constitutional principle of legality, and not under PAJA. I am advised that, accordingly, the 180-day period contemplated in section 7 of PAJA does not apply.

45. The applicable enquiry is whether the delay is reasonable and adequately explained, having regard to:

a. The nature of the impugned decision;

b. When the unlawfulness became apparent;

c. The conduct of the Applicant once the defect was discovered; and

d. The balance between legal certainty and the public interest in lawful governance.

42. I am advised that the Constitutional Court[1] confirmed that an organ of state is not barred from correcting its own unlawful conduct merely because time has passed, provided that the delay is properly explained and the interests of justice favour adjudication.

43. The Applicant acknowledges that this review was not instituted immediately after the expropriation decision. However, the delay is fully explained and reasonable when regard is had to the chronology of events.

44. At the time the expropriation was resolved upon, the Applicant acted on the basis of information then available regarding the suitability of the property. Thereafter:

a. Adverse environmental findings and expert opinions were obtained incrementally, namely:

I. The Geotechnical Investigation Report was completed in November 2022; see Record Volume 2, COE-R4.

II. The THEVHA Final Scoping Report was completed in March 2024. See record volume 2 COE-R5.

[1] *State Information Technology Agency SOC Ltd v Gijima Holdings (Pty) Ltd* 2018 (2) SA 23 (CC)

b. The limitations to the development were consistently presented, including through expert reports commissioned and submitted by the Plaintiffs themselves as capable of mitigation, albeit at increased cost and through appropriate engineering, environmental management, and planning interventions. The Plaintiffs' own materials conveyed that the land retained development potential, and did not assert that the land was inherently unsuitable or legally incapable of being developed;

c. Correspondence from the relevant provincial authorities clarified that the land could not lawfully be developed for the intended purpose only in May 2025;

d. These findings were escalated for internal consideration and verification; and

e. Council only became properly apprised of the full implications of these facts at a later stage, whereafter it resolved to pursue this review.

45. The Municipality was faced with a lengthy period of uncertainty, and the delay that followed in reversing the expropriation must be understood against this evolving factual and regulatory landscape. The Municipality was confronted with competing expert opinions, some of which understated the severity of the land's constraints, and others which emerged only incrementally. In that context, the delay was not the product of indifference or inertia, but of an

ongoing attempt to reconcile conflicting technical assessments before an authoritative regulatory position was finally adopted.

46. The Applicant acted diligently once the material error underlying the expropriation became apparent. The delay is neither tactical nor opportunistic, but the result of responsible governance and verification of complex factual and regulatory issues.

When the Unlawfulness Became Apparent

47. At the time the expropriation decision was taken, the Applicant proceeded on the bona fide assumption that the property was suitable and capable of lawful housing development, and that the jurisdictional facts required by section 9(3) of the Housing Act were present.

48. The unlawfulness giving rise to this review was not apparent on the face of the record at that time. The defect lay in the absence of a fundamental jurisdictional fact, namely that the land was lawfully developable for housing purposes.

49. That assumption was objectively and conclusively disproved only upon the refusal of Environmental Authorisation by GDARD, issued on or about 17 May 2025.

50. The GDARD refusal followed specialist investigations, including wetlands, hydrological and geotechnical assessments, and determined that:

a. A substantial portion of the land comprises wetland systems;

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b. The soils are waterlogged and geotechnically unstable; and

c. The environmental impacts cannot be mitigated to acceptable levels.

51. Until the GDARD decision was issued, the absence of this jurisdictional fact was not conclusively established, and the Applicant was not in a position to assert, with objective certainty, that the expropriation was unlawful *ab initio*.

52. While there was a period of **six (6) months** between the emergence of adverse information and the adoption of the resolution by the council to set the expropriation aside, that interval must be understood in the context of the Applicant's statutory governance framework. No single functionary was empowered unilaterally to withdraw the expropriation. Corrective action required collective decision-making by Council, informed by legal and technical advice.

53. The delay is accordingly relevant not as evidence of bad faith, but as part of the factual matrix within which this Court is asked to assess the legality of the expropriation and to grant just and equitable relief.

Conduct of the Applicant After Discovery of the Defect

54. Once the GDARD refusal decision was received, the Applicant acted diligently and responsibly.

55. The Applicant:

a. Obtained and considered expert confirmations regarding the environmental and geotechnical unsuitability of the land.

I. On 16 October 2025, the Applicant's attorneys of record, Lusenga Attorneys, consulted with Mr Percy Mhinga for purposes of formally appointing him as an environmental expert to prepare an expert report in his capacity as an environmental specialist.

II. On 22 October 2025, Mr Mhinga conducted a site inspection of the property in dispute in order to assess its condition and to determine whether the property is conducive to residential housing development.

III. On 30 October 2025, Mr Mhinga finalised and submitted his expert report, which report was thereafter duly served on the First Respondent.

b. Assessed the legal implications of the refusal in light of the Housing Act, NEMA, and section 25 of the Constitution; and

c. Placed the matter before its mayoral Committee on 17 November 2025 and Municipal Council on 27 November 2025.

56. On or about 4 December 2025, the Municipal Council resolved that the expropriation decision was materially flawed, taken in the absence of essential jurisdictional facts, and that the Applicant was constitutionally obliged to institute a self-review application to set it aside and not proceed with the trial on 2 February 2026.

57. Once an expropriation has been effected, the Applicant is not entitled unilaterally to undo or "withdraw" it under section 23 of the Expropriation Act. To do so would amount to the exercise of further public power on an already defective foundation.

58. Where an expropriation is tainted by illegality, only a court may determine its validity and grant appropriate just and equitable relief. This application is therefore not an attempt to circumvent statutory mechanisms, but a constitutionally compelled step to correct an invalid exercise of public power.

Mediation and Attempts to Resolve the Matter

59. I further confirm that, following the GDARD refusal the parties were engaged in mediation proceedings in an attempt to resolve the compensation dispute without further litigation.

60. The mediation process commenced on or about 31 October 2025 and continued until it formally failed on or about 10 December 2025.

61. The Applicant's participation in mediation was undertaken in good faith and in accordance with its constitutional and statutory obligations to seek reasonable, cost-effective dispute resolution.

62. The mediation process necessarily delayed the immediate institution of review proceedings, as only Council could accept or refuse the settlement terms proposed, this was done in a manner consistent with responsible governance and judicial economy.

The December 2025 Resolution to Revoke the Expropriation

63. Following the completion of the requisite internal processes, and once the material defects underpinning the expropriation had been fully appreciated, the Municipal Council resolved on 4 December 2025 to set aside the expropriation on review.

64. That resolution represents a deliberate institutional step taken by the Applicant to correct an earlier invalid exercise of public power. It was not taken lightly, nor precipitously, but followed consideration of expert input, legal advice, and the procedural requirements governing the reversal of a Council decision of this nature.

65. The Applicant expressly acknowledges that the decision to rescind was taken later than would have been ideal. However, it reflects the operation of lawful municipal governance processes rather than indifference or defiance of constitutional obligations.

66. I am advised that, notwithstanding the Council resolution to rescind the expropriation, the expropriation has legal consequences that cannot be undone by internal resolution alone. Only a court is competent to determine the lawfulness of the expropriation and to grant relief that is just and equitable in all the circumstances.

67. This application is thus brought not to evade responsibility, but to ensure that an invalid exercise of public power is corrected in a constitutionally compliant manner.

Withdrawal Consent Request

68. Prior to the collapse of mediation, and as part of exploring all potentially lawful avenues, the Applicant requested the First Respondent's consent to withdraw the expropriation in terms of section 23 of the Expropriation Act.

69. That request was made on 09 December 2025, which is evidently required in that three months have passed since the date of expropriation. The First Respondent refused to grant consent, in addition to the invalidity of the expropriation process renders section 23 unavailable in any event, as set out elsewhere in this affidavit, section 23 is not competent to address an expropriation that was void *ab initio* for want of jurisdictional facts.

The Applicable Municipal Framework

70. The Municipality is a complex, multi-layered organ of state, governed by a constitutional and statutory framework that requires collective, procedurally

compliant decision making. Decisions of the magnitude of an expropriation, and particularly the abandonment or correction thereof, cannot be taken precipitously or by a single functionary. They require, at a minimum:

70.1. Internal legal assessment to ensure compliance with the Constitution and applicable legislation, as required by sections 4(2) and 51 of the Local Government: Municipal Systems Act 32 of 2000, read with section 62 of the Municipal Finance Management Act 56 of 2003;

70.2. Structured engagement between relevant municipal departments, including legal, planning, environmental, and financial divisions, consistent with section 51(1)(c) of the Municipal Systems Act and the accounting officer's duties under section 62 of the MFMA to prevent irregular or wasteful expenditure;

70.3. The preparation of formal reports to Council by the municipal administration, enabling informed and accountable decision making as contemplated in sections 41 and 51 of the Municipal Systems Act, read with sections 30 and 160 of the Local Government: Municipal Structures Act 117 of 1998; and

70.4. Deliberation and adoption through properly convened Council processes, in accordance with section 160 of the Municipal Structures Act and the principles of transparency, accountability, and legality entrenched in section 1(c) of the Constitution.

71. These steps are not discretionary. They are mandated by statute and are designed to ensure that the exercise and correction of public power occur lawfully, rationally, and in a manner that safeguards public resources.

72. These processes are a safeguard and are deliberative by design, they cannot be equated to the actions of a private litigant.

Reasonableness and Absence of Prejudice

73. The delay in instituting this application is accordingly explained by:

a. The late emergence of objective facts establishing unlawfulness;

b. The Applicant's engagement in expert assessment and internal governance processes;

c. Bona fide participation in mediation; and

d. The subsequent refusal of consent by the First Respondent.

74. The GDARD refusal established that the intended use of the land, which was expropriated, is impossible on a legal and practical basis.

75. Leaving the decision in force would cause substantial financial prejudice to both the Municipality and public coffers. The First Respondent intend to compel the

City to compensate it for the property at a valuation based on its developability. However, subsequent environmental assessments confirm that the land is largely undevelopable. Maintaining the decision would therefore compel the City to expand considerable public funds defending the claim the payment for land that cannot be used for the intended public purpose, resulting in wasteful and irregular expenditure in contravention of the Municipal Finance Management Act.

76. The City risks further financial exposure through substantial damages claims in the pending trial proceedings, including interest and legal costs, which would unnecessarily deplete public funds earmarked for service delivery, for no legitimate purpose, as the GDARD refusal is binding and final in effect, unless set aside by a competent Court.

77. Proceeding with the expropriation will trigger further wasted costs relating to engineering studies, alternative development feasibility assessments, and potential rehabilitation obligations arising from wetland degradation or mining impacts.

78. The City's audit and financial governance obligations would be compromised by continuing with an expropriation that is inconsistent with environmental feasibility and lawful municipal planning, as well as a practical and legal impossibility.

79. I am advised furthermore that the City will suffer legal prejudice as follows:

a. If the unlawful expropriation decision remains in force, the City is exposed to ongoing and escalated litigation risks, including but not limited to:

I. A claim for compensation based on the expropriated land's market value;

II. Delictual claims from a health and safety perspective for any occupants;

III. Future claims arising from breaches under NEMA;

IV. The continuation of the trial set down for 2 February 2026, while a patently unlawful decision remains uncorrected, creates procedural unfairness and results in unnecessary litigation expenditure;

V. Maintaining the decision would expose the City to adverse costs orders and potentially punitive findings for failing to correct an unlawful administrative act known to be defective.

80. Prejudice to the First Respondent:

a. The property remains under an expropriated status, which restricts its ability to utilise or dispose of, or leverage the property.

b. An expropriation for a purpose that cannot be realised constitutes an arbitrary deprivation of property under Section 25 of the Constitution, which is itself a form of serious prejudice to the landowner.

81. The Municipality does not contend that the setting aside of the expropriation is without any practical consequences for the First Respondent, nor that the passage of time was immaterial.

82. It is accepted that the First Respondent conducted itself over a period of time on the assumption that the expropriation decision remained operative, and that its withdrawal necessarily disrupted that position.

83. However, the question before this Honourable Court is not whether the First Respondent experienced inconvenience or uncertainty, but whether the delay resulted in legally cognisable prejudice of a nature that would justify allowing an unlawful exercise of public power to stand.

a. In this regard, several factors are material:

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I. No agreement on compensation was ever concluded, and no compensation was paid;

II. The development for which the property was expropriated remained legally unrealised, due to the absence of township establishment and other statutory approvals;

b. The First Respondent was aware, or ought reasonably to have been aware, that the realisation of the stated public purpose was contingent upon approvals that had not been secured and were, at best, uncertain.

c. Any expectation held by the First Respondent was therefore "qualified, and necessarily subject to the risk that the legal and factual foundations of the expropriation might not withstand scrutiny".

d. The property has never been developed;

e. Ownership has not passed to the Applicant; and

f. The First Respondent's claim at trial is purely a monetary compensation claim for the value of the expropriated land (which the Municipality seeks to return to the First Respondent).

84. The setting aside of the expropriation does not deprive the First Respondent of compensation that had accrued, nor did it defeat a development that had become legally permissible. It restores the parties to a position where

ownership reverted without the Municipality having derived benefit from an unlawful expropriation.

85. Maintaining the expropriation decision would cause prejudice to the City, the taxpayer and the Respondent. However, correcting the unlawful decision through a self-review is therefore essential, lawful, and constitutionally required.

86. If the expropriation is declared unlawful and invalid, the foundation for the compensation proceedings necessarily falls away. It would be neither just nor equitable for the parties or the Court to proceed with a compensation trial premised on an expropriation that is void ab initio.

87. In these circumstances, while the delay and review undoubtedly have consequences, those consequences do not rise to the level of prejudice that would render it just and equitable to compel the Municipality to persist in an unlawful expropriation or to immunise that decision from review.

88. The public interest in restoring legality, ensuring that expropriation occurs only where jurisdictional facts are present, and protecting the integrity of constitutional governance outweighs the First Respondent's interest in finality premised on a legally defective decision.

89. The First Respondent does not suffer prejudice that outweighs the public interest in legality. By contrast, allowing an unlawful expropriation to stand would:

89.1. Compel the Applicant to stand trial to pay compensation for a purpose that is legally impossible;

89.2. Require the Applicant to act in breach of NEMA and section 24 of the Constitution; and

89.3. Undermine the foundational constitutional principle that all exercises of public power must be lawful.

90. It bears emphasis that the Plaintiffs were not passive recipients of the Municipality's assessments. They actively advanced expert material which suggested that the land could be utilised to a meaningful extent. Those representations materially informed the Municipality's understanding and cannot now be disregarded when the historical decision-making process is evaluated.

91. Once it became clear that the expropriation was legally unsustainable, the matter was escalated through the appropriate governance structures. This culminated in the adoption of the rescission resolution by Council on 4 December 2025.

92. The Municipality acted as soon as it was institutionally able to do so, consistent with lawful process.

93. In these circumstances, the delay is reasonable, justified, and should not bar this Honourable Court from determining the lawfulness of the expropriation decision and setting it aside.

Public Interest Overrides Complaint of Delay

94. Even if this Honourable Court were to find that there was a delay, it is submitted that:

a. The delay is justified;

b. The public interest in correcting unlawful exercises of public power outweighs any private interest in finality;

c. Allowing an unlawful expropriation to stand would undermine the principles of constitutional governance.

95. I am advised that it would be constitutionally invalid and reckless for the Municipality to proceed with the expropriation and even the trial for compensation in the name of finality, while being aware of the unlawfulness surrounding the expropriation.

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96. The Applicant's initial opposition to the compensation proceedings instituted by the First Respondent occurred during a period when the factual and regulatory position regarding the suitability of the property had not yet crystallised. That opposition flowed from the existence of an extant expropriation decision at the time, as well as the view that the property was not worth the value sought due to the existing limitation and potential cost in rehabilitating the property.

97. The opposition did not constitute a considered or final affirmation of the substantive validity of the expropriation in the face of subsequently emerging information.

98. I pause here to emphasise that this error in fact and or misrepresentation on the developable nature of the land, as well as the misconceptions surrounding the true extent of the environmental defects and instability, were neither the sole cause of the Municipality nor were they perpetuated by the Municipality's doing. The First Respondents and their experts have additionally continued to assert that the land is capable of development. The expert reports filed in the High Court in relation to the compensation claim, as late as **March 2024,** which appear in volume 2, COE-R6, insist that the land is developable. In particular, the valuation report of **J.F. du Toit** concludes the property is worth +_64 million rand and makes the following assertions regarding the expropriated property:

> " *Based on the "Motivating Memorandum" compiled by Urban Dynamics" which formed part of the 13 July 2007 township establishment application", the property was originally used for mining activities and had several mining*

houses (married quarters) thereon. These houses have since been demolished" as part of the mine closure.

The TSF on the northern side has since been reclaimed. This includes the retention of a sludge-pipe as a pipeline servitude (refer par.'s 3.2.4 & 3.3.5(i ii)). The reclamation excavation and settlement of the old TSF, created a slight depression of the northern part, which resulted in the establishment of an artificial wetland in this part. Based on the SAS report this should not impact on utility of the site as "Development of the entire subject property is therefore considered appropriate from a freshwater resource management p oint of view.[2]

The 2007 application for Comet Extension 8 followed the original identification of the site for industrial purposes and proposed a mixed-use d evelopment for the whole Subject Property, which included Residential 4, In dustrial 3, Business 2 and Commercial land uses. The larger northern part (+-23.26ha) was envisaged for an industrial/commercial use. The wetland fo rming in this part, and the delays in obtaining a radon clearance certificate""

[2] Report by Scientific Aquatic Services ("SAS"), December 2023, prepared by Stephen van Staden (Pr. Sci. Nat): Consideration of Wet Response Areas Associated with Portion 406 of the Farm Driefontein 85-IR, Boksburg, Gauteng with Focus on Historical Impacts and the Requirements for Future Sustainable Development and Management, page 18.

for the TSF area, prompted the owners to take a 2-phased approach. It resu lted in the current phase 1 approved Comet Extension 8, which excluded th e northern part. The intention was always to thereafter apply for a further to wnship on the developable portion of the northern section.

On 01 August 2018 CEMM advised Urban Dynamics on behalf of the owner that the Ekurhuleni Municipal Planning Tribunal on 19 June 2018 approved the township application on a portion of the property. This approval for the establishment of Comet Extension 8, was based on Layout Plan.io. C17/20 15.02.12 (Figures 5 & 6 are based on this plan). Table 1 summarises the ap proved land use rights for Comet Extension 8". Reference to scheme in this table means the Ekurhuleni Town Planning Scheme, 2014.

Development will therefore occur on +-10.42ha (30.9%) on the southern par t of the Subject Property of 33.6847ha. The 123 single residential erven (Re sidential 1), will vary between 240m' and 491m, with an average extent of + _270m'. These erven abut and effectively will become part of an extended P lantation suburb. The 2 proposed Residential 4 sites (7,846m² and 12,717m '), to be developed with around 123 units, are found in the western part of C omet Extension 8, alongside Rondebult Road, with the smaller site forming t

he southwestern tip (refer par. 2.4). The average density for the whole deve lopment (units/gross extent) is 23.61 units per hectare.

Some of the relevant conditions imposed with the approval are as follows:

(I) The submission of a Site Development Plan in terms of clause 29 of the s cheme (Condition 4.1). This will not impact on the approved land use rights.

(ii)That services contributions be paid (Condition 4.2). Amounts for these ar e omitted in the approval documents. Table 2 summarises such amounts as based on correspondence of CEMM. It equates to +_R36.11 per m' (excludi ng VAT) for the +_104,198m? with approved developable rights on the property.

(iii)Ensure that the water pipeline is protected by means of a servitude (Con dition 1.2.7) in respect of SRP33 2161/2006 (PL 1641), in favour of ERMP. Refer to par. 3.2.4 above.

(iv) The erection of a physical barrier (Condition 4.6. (b)) alongside the K9 0 (Rondebult Road) to the satisfaction of Gautrans.

The township application was approved for the following reasons (Condition S): "The proposed land use is in line with the provisions of the on the Ekurh uleni Town Planning Scheme, 2014; The application and land use applied f or is in line with the objectives of the Region A RSDF"™ and "The proposed residential development is an extension of the Plantation residential suburb and access is to the satisfaction of the Municipality."

...The Comet Extension 8 township approval is in line with the planning visi on of the area. The Ekurhuleni SDF" and more particular the RSDF, earmar k the Subject Property to form part of a future "Activity Node Mixed Use", to the north of Boksburg CBD. This envisages a mixed use comprising of medi um density residential and commercial development. The approval of Comet Extension 8 is only in respect of a residential usage and is viewed as an extension of the existing Plantation suburb.

The further developable land (#23.26ha) on the northern part of the property will most likely have potential for a higher commercial use and/or residential use. ***Based on a geotechnical assessment" it was found that the whole northern section has development potential from an undermining stab ility point of view****, considering that the undermining is in excess of 100m b*

elow surface. Only the Northern part of this section is deemed a shallow zo ne (refer to light purple area in Figure 6 and the area between the 120m B.S . and 200m B.S. contours on Figure 4), with mining depth less than 200m, w hilst the balance of the site (light blue on Figure 6) is a deep zone with mining in excess of 200m below surface.

The shallow zone is t5ha with the balance (t18.26ha) of the northern part a deep zone. "In terms of development types, it is foreseen that commercial, e ducation and recreational developments will be possible over the entire stud y area. It is recommended that residential development be limited to the dee p zone. Residential development in the shallow zone, although considered p ossible, will require further drilling to confirm the stability."

***As per the SAS report "Development of the entire subject property is therefore considered appropriate from a freshwater resource manage ment point of view"**, which includes this northern portion of +23.26ha…*

The property's highest and best use is the 19 June 2018 township approval for Comet Extension 8, as discussed above and which is located on +-10.42 ha of the Subject Property. This is a portion with approved land use rights fo

r 246 residential units (123 x Residential 1 units and 123 x Residential 4 units).

As stated under par.'s 3.3.8 & 3.3.9 a further +-23.2649ha of the property remains and has development potential from an undermining stability point of view. It is foreseen that commercial, education and recreational developments could take place over this entire area, with the most northern +5ha shallow zone largely limited to such uses.

The remaining + 18.2649ha deep zone can be unlocked without any expected restriction, with a most likely residential development usage. Residential development is a possibility in the shallow zone, but this will require drilling to confirm stability.

Considering the 2018 feasibility report" undertaken on behalf of CEMM, which projected that the whole Subject Property, including the whole Northern part (#23.26ha), would primarily be unlocked for residential purposes. This report which was done a couple of months before approval of the Comet Extension 8, anticipated the following development, with an estimated construction cost of R1.27 billion, for the Whole Subject Property:

During January 2023, a PowerPoint presentation of a development proposa l" for the Subject Property was circulated by CEMM. This envisages a mixed use development for the Subject Property, comprising of 2,496 residential u nits (middle, low and high-income units) on +_17.5ha, with the balance of th e site earmarked for a variety of uses, as illustrated in Figure 8. These two CEMM planning documents illustrate the housing potential the municipality envisages for this site.

The SAS report furthermore indicated that development of the whole Subjec t Property, including the northern +_23.2649ha, should not be curtailed by wetland considerations.

The SAS report furthermore indicated that development of the whole Subject Property, including the northern +23.2649ha, should not be curtailed by wetland considerations.

At the date of valuation, the Subject Property's highest and best use is the +_10.42ha approved Comet Extension 8, with the whole balance of +23.264 9ha having development potential for residential and mixed-use purposes.

The whole of the property therefore has development potential, including ap proved rights for _+10.4198ha (30.93%).”

99. However, once the true extent of the environmental and geotechnical defects in the expropriated property became clear, the Applicant took steps through its internal governance structures to reverse the expropriation and to approach this Court for appropriate relief.

100. It is my humble submission that the delay in instituting this application ought to be condoned to the extent necessary.

H. LEGAL BASIS OF REVIEW

101. The Applicant is an organ of state seeking to set aside its own decision on the basis that it was taken ultra vires, in the absence of jurisdictional facts, and on a materially incorrect factual premise. This review is thus brought under the constitutional principle of legality, and not PAJA.

Jurisdictional Preconditions for Lawful Expropriation

102. Expropriation constitutes a severe and exceptional exercise of public power. As such, it is lawful only where the jurisdictional facts authorising its exercise are objectively present. These include, at a minimum, that:

a. The expropriation is genuinely for a lawful public purpose or in the public interest;

b. There exists a rational connection between the property expropriated and the stated purpose;

c. The decision-maker has considered all material facts relevant to the suitability of the property for that purpose; and

d. The decision complies with applicable constitutional, statutory, and environmental obligations.

103. In the absence of these jurisdictional facts, the power to expropriate does not arise, and any purported expropriation is unlawful and invalid.

104. The power relied upon by the Municipality to expropriate the property does not arise from the Expropriation Act as a primary source, but from section 9(3) of the Housing Act 107 of 1997, which confers a derivative, conditional and tightly circumscribed power of expropriation on municipalities for purposes of housing development.

105. Section 9(3) does not permit expropriation as a matter of convenience or policy preference. It authorises expropriation only where specific jurisdictional facts exist, and only for so long as those facts remain sustainable in law and in fact. Absent compliance with those requirements, the power to expropriate does not arise.

106. In particular, section 9(3)(a) requires that, before a municipality may expropriate land for housing purposes:

106.1. The municipality must have been unable to acquire the land on reasonable terms through negotiation, demonstrating necessity rather than expedience;

106.2. The proposed expropriation must be aligned with and capable of implementation within a national or provincial housing programme, and not merely contemplated in the abstract;

106.3. The municipality must have obtained the prior written approval of the Member of the Executive Council responsible for housing, which approval must itself be grounded in a lawful and feasible housing purpose; and

106.4. The expropriation must be effected within the temporal limits prescribed by the statute, failing which the authority to expropriate lapses.

107. Section 9(3)(b) further incorporates sections 1, 6 to 15 and 18 to 23 of the Expropriation Act 63 of 1975 into municipal housing expropriations. That incorporation imports not only procedural requirements, but also significant financial and legal consequences, including exposure to compensation and damages, which in turn demand strict compliance with public-finance and governance obligations.

108. Critically, the jurisdictional requirements in section 9(3) presuppose that the land sought to be expropriated is lawfully suitable and capable of being developed for housing purposes. An expropriation for a housing purpose that is legally prohibited, environmentally unachievable, or practically impossible is inconsistent with the statutory design of section 9(3) and falls outside the scope of the power it confers.

109. Where, as in this matter, objective facts establish that the land is environmentally and geotechnically unsuitable for housing development, the foundational jurisdictional fact underpinning section 9(3) is absent. In such circumstances, the purported exercise of the expropriation power is ultra vires, irrational, and invalid ab initio, irrespective of the Municipality's bona fide intentions at the time.

110. The existence of these jurisdictional requirements also explains why decisions to exercise, abandon, or correct an expropriation under section 9(3) cannot be taken informally or by a single official. They require careful legal assessment, inter-departmental engagement, and deliberation by Council to ensure that the statutory preconditions for the exercise of so intrusive a power are, and remain, satisfied.

111. I am advised that each of the jurisdictional facts required by section 9(3) of the Housing Act must exist at the time the expropriation decision is taken. If anyone is absent, the decision is ultra vires and void, not merely defective.

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112. The GDARD refusal conclusively establishes that the first and foundational jurisdictional fact lawful suitability for housing development never existed. The expropriation was therefore invalid from inception, irrespective of subsequent steps taken.

113. I am advised by our legal representatives, and verily believe, that a municipality's power to expropriate under Section 9(3) of the Housing Act is not absolute. It is a derivative power, strictly conditioned upon the existence of certain jurisdictional facts at the time the decision is made. The absence of any one of these facts renders the decision ultra vires and unlawful.

114. The GDARD refusal, now confirmed by the Municipality's own experts, demonstrates conclusively that critical jurisdictional facts were absent and or distorted when the Council resolved to expropriate on 27 September 2018. These include:

a. **Suitability for Housing**: The land is not suitable, safe, or developable f or human settlements due to its wetland nature, geotechnical instability , and associated health risks, contrary to Section 9(1)(a) of the Housing Act and Section 24 of the Constitution.

b. **Rational Nexus to a Public Purpose**: The stated public purpose (hou sing development) has become a legal and practical impossibility. An

expropriation for an impossible purpose is irrational and offends Sectio n 25(2) of the Constitution.

c. **Compliance with NEMA**: The intended development required, but can not obtain, Environmental Authorisation. Expropriating land for a purpo se that is prohibited by environmental law is unlawful.

d. **Prior Feasibility**: A proper pre-expropriation feasibility assessment, which would have included the geotechnical and environmental studies now in the Applicant's possession, was not conclusively demonstrated to have been completed and or properly considered.

115. The decision was therefore based on a material error of fact regarding the land's core characteristics. This error is so fundamental that it goes to the heart of the Municipality's statutory authority to expropriate.

116. Consequently, the expropriation decision was unlawful at its inception. It is not a case where a valid decision has subsequently become inconvenient; it is a case of a decision that was never legally valid, based on incorrect information.

117. An expropriation constitutes one of the most invasive exercises of public power and may only lawfully occur where all jurisdictional facts prescribed by the Constitution and enabling legislation are objectively present at the time the decision is taken.

118. In terms of section 25(2) of the Constitution, read with the Expropriation Act 63 of 1975 (as applicable at the time), an expropriation is lawful only if:

a. It is :"effected for a public purpose or in the public interest";

b. The property is "reasonably suitable" for the stated purpose;

c. The decision is "rationally connected to an achievable objective"; and

d. The procedural and substantive requirements of law are met.

119. I am advised it is trite that the subsequent emergence of information or later intentions cannot retrospectively supply missing jurisdictional facts. The lawfulness of an expropriation stands or falls on the facts that existed when the power was exercised.

No Lawful Achievable Public Purpose

120. The Municipality purported to expropriate the property for the purpose of township establishment and housing development.

121. However, at the time the notice of expropriation was issued:

a. The property "did not enjoy township establishment approval";

b. The First Respondent itself "had not obtained the requisite planning and land use approvals";

c. The proposed development was "not legally realisable" under applicable pla nning and environmental legislation.

d. On the First Respondent's own version, they were allegedly still in the proce ss of contemplating or pursuing an appeal process in relation to township es tablishment at the time the expropriation occurred.

122. An expropriation premised on a development that is contingent, unresolved, or legally uncertain cannot satisfy the constitutional requirement of a genuine and achievable public purpose.

123. Public purpose, in this context, requires more than a stated intention. It requires an objectively feasible outcome, grounded in lawful approvals and regulatory compliance.

Failure to Establish Suitability of the Property

124. The Municipality failed objectively establish, prior to expropriation, that the property was suitable and developable for the stated purpose.

125. No evidence exists that, before expropriation:

a. Environmental feasibility had been conclusively established;

b. Planning constraints had been lawfully resolved;

c. The property could in fact be developed without contravening environmental, land-use, or safety legislation.

126. An expropriation undertaken in the absence of legitimate feasibility and suitability is arbitrary and inconsistent with the principle of legality.

The Purported Agreement to Expropriate Did Not Cure the Invalidity

127. The Municipality and the First Respondent concluded a written agreement as part of the expropriation process, which is included in the record volume 2 **"COE-R7".**

128. That agreement did not constitute an agreement on compensation, nor did it purport to do so.

129. More importantly, the agreement could not and did not cure the absence of jurisdictional facts required for a lawful expropriation, including:

a. The absence of township establishment approval;

b. The absence of valid feasibility;

c. The absence of a legally realisable public purpose.

130. It is submitted that consent or cooperation by an owner cannot validate an expropriation where statutory preconditions are objectively absent.

The Expropriation Was Invalid Ab Initio

131. It is submitted that because the jurisdictional facts for lawful expropriation were absent at the time the decision was taken, the purported expropriation was invalid from inception.

132. I am advised the Municipality was not empowered in law to expropriate property for a purpose that was not legally achievable, and which depended on future approvals that had neither been obtained nor guaranteed.

133. I must emphasise that the subsequent rescission of the expropriation resolution constitutes a recognition of this legal reality, and not an admission giving rise to liability.

Environmental Unsuitability and Rationality

134. The unsuitability of the property for the stated housing purpose is not a peripheral or downstream consideration relevant only to later development. It strikes at the heart of the lawfulness of the expropriation itself.

135. I am advised expropriating land for a purpose that cannot lawfully or rationally be achieved on that land is constitutionally impermissible. It offends the principle of rationality, Section 25 of the constitution and the Applicant's obligations under section 24 of the Constitution as well as the requirement that

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public power cannot be exercised in a manner disconnected from the facts that justify it.

136. In this matter, authoritative environmental assessments and correspondence from the relevant provincial authorities confirmed that the property is unsuitable for the intended purpose. Once these facts are properly considered, the expropriation cannot be said to serve a lawful public purpose and is accordingly invalid.

The Municipality Was Constitutionally Obliged to Arrest Ongoing Illegality

137. The resolution Council is not arbitrary, capricious, or politically motivated. It followed a reassessment of the legal viability of the expropriation in light of:

a. The absence of township establishment approval at the time of expropriation;

b. The absence of objective feasibility for the stated public purpose;

c. The legal impossibility of proceeding with development in the absence of statutory approvals;

d. The consequent lack of jurisdictional facts required for a lawful expropriation.

138. An organ of state is not entitled to persist in unlawful conduct once the unlawfulness becomes apparent.

139. The rescission resolution constitutes an exercise of corrective governance, consistent with:

a. The principle of legality;

b. The duty of organs of state to act lawfully, rationally, and in good faith;

c. The constitutional obligation to prevent the continued operation of unlawful decisions.

140. The Municipality could not lawfully defend, implement, or rely upon an expropriation decision that was void for want of jurisdictional facts.

141. I humbly submit that the Municipality accordingly concluded that allowing the expropriation to stand would perpetuate an unlawful exercise of public power.

The Resolution of Council Does Not Create Liability or Confer Rights

142. I am advised that the Council resolution to rescind the expropriation does not:

a. Constitute an admission of fault giving rise to delictual or constitutional damages;

b. Validate the expropriation retrospectively;

c. Create an entitlement to compensation where none existed in law.

143. I am further advised that a decision that is unlawful from inception does not generate vested rights, and its withdrawal or rescission does not automatically transform illegality into liability.

144. The Municipality acknowledges that it lacked the legal authority to expropriate in the circumstances that prevailed, which is not the same as admitting to a compensation claim.

145. Far from prejudicing the First Respondent, the review prevents:

a. The continued alienation of property under the terms of an invalid expropriation;

b. Prolonged litigation premised on a legally defective foundation;

c. The further erosion of constitutional governance.

146. It is respectfully submitted that the rescission must be understood as a protective measure, aimed at restoring legality and preventing the escalation of unlawful consequences.

A Summary of the Grounds for Self-Review

147. The Municipality seeks to review and set aside its own decision on the basis that the power to expropriate was exercised in the absence of objectively existing jurisdictional facts. The decision was taken on the mistaken premise that the property was suitable for housing development, when in truth it is an environmentally sensitive wetland system materially compromised by historic mining activity. While certain constraints were known at the time, the decisive fact that the land could not lawfully be developed for human settlement was not yet established, and the assumption of feasibility ultimately proved to be incorrect.

148. A proper examination of the Rule 53 record demonstrates that, at the time the expropriation decision was taken, there was no final environmental feasibility clearance, no wetlands-specific risk mitigation approval, no geotechnical certification supporting human settlement development, and that the MEC's permission was granted on the basis of assumed feasibility rather than confirmed regulatory compliance. These were not peripheral considerations. They were essential facts going directly to whether the statutory power to expropriate for housing purposes under section 9(3) of the Housing Act could lawfully be exercised at all.

149. In these circumstances, the expropriation was irrational and unlawful under the principle of legality. An exercise of public power for a purpose that cannot lawfully or feasibly be realised lacks a rational connection to the purpose for

which the power was conferred. The omissions identified are therefore not mere procedural defects; they negate the existence of the power itself. The Municipality accordingly seeks judicial correction of the Council decision taken on or about 27 September 2018, and the subsequent publication and implementation of the notice of expropriation, both of which constitute exercises of public power that are ultra vires, irrational, and invalid ab initio.

150. The First Respondent cannot claim a legitimate expectation that the Municipality would persist with an expropriation that was legally unsustainable. Any expectation premised on the continuation of an unlawful exercise of public power is not legally cognisable.

J. INAPPLICABILITY OF SECTION 23 OF THE EXPROPRIATION ACT

151. I am advised that Section 23 of the Expropriation Act is not competent in the present circumstances.

152. First, more than three months have elapsed since the date of expropriation, and the First Respondent has expressly refused consent to the withdrawal of the Expropriation, attached hereto and marked **"COE4"**

153. Second, section 23 presupposes a lawful expropriation capable of withdrawal. It does not provide a mechanism to cure or undo an expropriation that was void ab initio for want of jurisdictional facts.

154. Third, reliance on section 23 would trigger a statutory entitlement to damages for withdrawal, notwithstanding that the property in actual fact cannot be used for a public purpose or any purpose by the Municipality. Leading to a constitutionally perverse outcome.

155. The right to compensation contemplated in section 25(2) of the Constitution arises where an expropriation is lawful.

156. I am advised that, in the circumstances, compensation is the constitutional consequence of a valid exercise of expropriation power, not of an unlawful or ultra vires act, informed by a bona fide error, which, in its absence, the Applicant would persist with the expropriation and defend a zero compensation position.

157. In these circumstances, the only lawful mechanism is judicial review under the principle of legality.

L. REMEDY SOUGHT

Just and Equitable Relief

158. Where conduct is declared inconsistent with the Constitution, section 172(1) of the Constitution governs the remedial powers of the Court.

159. In terms of section 172(1)(b), the Court may grant relief that is just and equitable, having regard to:

a. The nature of the invalidity;

b. The public interest; and

c. The need to restore constitutional legality.

160. Compensation is not an automatic or default remedy under section 172. It is discretionary and fact-specific.

161. I am advised and submit that, where, as in the present matter, an expropriation is effected in the absence of jurisdictional facts, it is invalid ab initio and incapable of giving rise to an automatic entitlement to compensation. An unlawful expropriation is void in law and does not create enforceable rights, whether contractual, statutory, or constitutional.

162. The setting aside or rescission of an unlawful expropriation does not deprive an owner of vested rights, because no vested rights arise from illegality. It follows that compensation cannot be claimed as of right where the foundational act relied upon is legally non-existent.

163. In circumstances where an expropriation is set aside, the First Respondent bears the onus to establish:

a. A lawful basis for compensation;

b. That such compensation is just and equitable;

c. That it is causally linked to lawful state conduct.

164. The mere fact that the Municipality purported to expropriate property does not relieve the First Respondent of this burden.

165. I submit that no agreement on compensation was concluded between the Municipality and the First Respondent. The absence of agreement reinforces the legal position that:

a. Compensation was not settled or crystallised;

b. No enforceable entitlement arose;

c. The matter remains subject to legality and constitutional review.

166. To award compensation as of right in such circumstances would:

a. Sanction unlawful exercises of public power;

b. Undermine the principle of legality;

c. Impose an unjustified burden on the public fiscus.

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167. Public interest considerations favour the restoration of legality, not the monetisation of unlawful conduct.

168. I must emphasise that the Municipality expressly repudiates any view that compensation is due to the First Respondent, as of right.

The Orders Sought

169. The Applicant seeks the following relief:

169.1. Reviewing and setting aside the decision and subsequent gazetting of the decision by the Applicant and or the notice to expropriate land owned by the First Respondent in terms of Section 9(3) of the Housing Act 107 of 1997, read with Section 25 of the Constitution of the Republic of South Africa, and the Expropriation Act 63 of 1975, as invalid.

169.2. Condonation to the extent necessary of the delay in instituting the self-review.

169.3. Declaring the aforementioned decision and expropriation as invalid and of no force or effect, ab initio, and setting aside the expropriation.

M. CONCLUSION

170. The impugned decision is unlawful and falls to be reviewed and set aside.

171. For these reasons set out above, I respectfully submit that a proper case has been made for this court to grant orders as sought in the notice of motion to which this affidavit is attached.

172. I accordingly pray for the relief set out in the notice of motion.

DEPONENT

I certify that the Deponent has acknowledged that he knows and understands the contents of the Affidavit, which was signed and sworn before me at GERMISTON on the 23 day of December 2025, and that the provisions of the Regulations contained in the Government Gazette Notice No 1258 published in the Government Gazette No 3619 dated 21st of July 1972, as amended by Government Notice No 1648 dated 19th of August 1977, having been complied with.

COMMISSIONER OF OATHS

FULL NAMES: MELAMVI MUTHUHADINI

CAPACITY: CONSTABLE

SOUTH AFRICAN POLICE SERVICE
CLIENT SERVICE CENTRE
2025 -12- 23
GERMISTON
SOUTH AFRICAN POLICE SERVICE

ADDRESS:

"COE1"

EXTRACT FROM THE MINUTES OF THE ORDINARY COUNCIL MEETING OF THE EKURHULENI METROPOLITAN MUNICIPALITY HELD ON 26 OCTOBER 2017

A-CORP (09-2017) OC: DELEGATION OF POWERS, FUNCTIONS AND DUTIES TO POLITICAL OFFICE BEARERS, THE CITY MANAGER, MEMBERS OF THE MAYORAL COMMITTEE, CHIEF OPERATING OFFICER AND HEADS OF DEPARTMENT

RESOLVED

1. **That** Council **NOTES** the report on the System of Delegations and the revised delegation of powers, functions and duties of the Speaker, Chief Whip, Executive Mayor, the Chair of Chairpersons, City Manager, the Members of Mayoral Committee, Chief Operating Officer and Heads of Department as Annexures.

2. **That** Council **ADOPTS** the **'SYSTEM OF DELEGATIONS,'** which includes the **'General Conditions of Delegation** attached as **ANNEXURE A.**

3. **That** all existing Conditions of Delegation previously adopted by the Council **BE RESCINDED.**

4. **That** the existing delegations to the Speaker, Chief Whip, Executive Mayor, City Manager the Members of Mayoral Committee, Chief Operating Officer and Heads of Department **BE RESCINDED.**

5. **That** the Delegations to the Speaker, Chair of Chairpersons, Chief Whip, the Executive Mayor and Leader of Executive Business as set out in **Annexures "B" to "D1"** in the System of Delegations document attached to the item, **BE APPROVED.**

6. **That** the Delegations to the City Manager as set out in **Annexure "E"** attached to the item **BE APPROVED.**

7. **That** the Delegations of the Members of Mayoral Committee, Chief Operating Officer and Heads of Departments annexed to the report as **'Annexure F; Annexure G, Annexure H' BE APPROVED.**

8. **That** the assigned powers set out in all the Annexures attached to the item **BE NOTED.**

9. That the City Manager **BE AUTHORISED** to effect minor amendments necessary to give effect to the Systems of Delegations of Powers and **REPORT** such to Council.

10. That the City Manager **BE AUTHORISED** to develop standard operating procedures and policies to compliment the system of delegations with a view to maximize efficiencies in the municipality and **SUBMIT** such policies for Council approval.

CERTIFIED A TRUE EXTRACT

SIGNED AT GERMISTON ON THIS 16th DAY OF NOVEMBER 2017

EKURHULENI METRO MUNICIPALITY
OFFICE OF THE COUNCIL SECRETARY
2017 -11- 16
Signature:

SECRETARY TO COUNCIL: EKURHULENI METROPOLITAN MUNICIPALITY

HOD: CORPORATE LEGAL SERVICES

These delegations must be read in conjunction with "THE GENERAL CONDITIONS OF DELEGATIONS AS CONTAINED IN THE COUNCIL'S SYSTEM OF DELEGATIONS OF POWERS" as well as any other relevant legislation and COE Policy

B – Delegated Powers from the City Manager to the HOD: Corporate Legal Services and officials in the Department

	THE HEAD OF DEPARTMENT: CORPORATE LEGAL SERVICES IS AUTHORISED TO :	SOURCE OF DELEGATED POWERS.	SUB-DELEGATION	KEY
1	i. Institute and defend legal action in all courts of law, including quasi-judicial forums on behalf of Council; ii. Sign all documents necessary for the institution and defending of legal actions and court applications iii. Appoint attorneys and / or counsel and / or relevant experts where required to represent the Council in any legal or quasijudicial proceedings; iv. Lodge or oppose an appeal on behalf of the Council against the decision of any court in any proceedings to which the Council is a party and report thereon to the City Manager; v. Obtain an opinion on any matter concerning or involving the Council from the Council's attorneys, counsel or from experts in the relevant field; vi. Agree to (a) A settlement amount not exceeding R2, 000,000 excluding costs, or such higher limit that the Council may from time to time determine, in respect of any claim or action by or against the Council, on the basis of advice from Council's attorneys/advocates or in cases where this is in his/her opinion in the best interest of Council; (b) The settlement of any claim or action by or against the Council where the claim or action has no monetary value; vii. Ensure compliance with any by-law or other legislation or right of the Council and take action in any applicable court where necessary;	CHAPTER 11 OF MUNICIPAL SYSTEMS ACT	Divisional Heads and Executive Managers	power to institute and defend legal action

27-70

"COE2"

HOD: CORPORATE LEGAL SERVICES

These delegations must be read in conjunction with "THE GENERAL CONDITIONS OF DELEGATIONS AS CONTAINED IN THE COUNCIL'S SYSTEM OF DELEGATIONS OF POWERS" as well as any other relevant legislation and COE Policy

	THE HEAD OF DEPARTMENT: CORPORATE LEGAL SERVICES IS AUTHORISED TO :	SOURCE OF DELEGATED POWERS.	SUB-DELEGATION	KEY
2.	Appoint legal representatives including legal representatives not on the panel of attorneys in cases of a pressing need for particular expertise duet to, non-availability of representatives on the panel, or requiring urgent action or other reasonable justification; Provided that this authority may be further delegated.		Divisional Heads	appointment of legal representatives
3.	Comment on new Bills and legislation and report on the implications of such Bills and legislation to the City Manager.		Divisional Heads, Executive manager and Manager	comment on new bills and legislation
4.	Identify areas of non-compliance with applicable legislation in the Municipality and report thereon to the City Manager and Risk Committee.		Divisional Heads and Executive Managers	identify areas of noncompliance with legislation
5.	Recover unauthorised, irregular or fruitless and wasteful expenditure from any person liable for such expenditure; on instruction from the Chief Finance Officer.	MFMA, Sec 32(2)	Divisional Heads, Executive Managers and Managers	unauthorised, irregular, fruitless and wasteful expenditure - recovery
6.	Recovering any amount paid or given in cash or in kind to a to a person as a political office-bearer or as a member of a political structure of the Municipality otherwise than in accordance with the framework of the Public Office-Bearers Act, 1998 (Act No. 20 of 1998), including any bonus, bursary, loan, advance or other benefit	MFMA S167(2)(a)	Divisional Heads and Executive Managers	recovering amounts or benefits to political office bearers
7.	Accept service of legal documents.	Municipal Systems Act 32 of 2000, Section 115(3)	Divisional Heads, Executive Managers and Managers	service of legal documents

27-71

HOD: CORPORATE LEGAL SERVICES

These delegations must be read in conjunction with "THE GENERAL CONDITIONS OF DELEGATIONS AS CONTAINED IN THE COUNCIL'S SYSTEM OF DELEGATIONS OF POWERS" as well as any other relevant legislation and COE Policy

	THE HEAD OF DEPARTMENT: CORPORATE LEGAL SERVICES IS AUTHORISED TO :	SOURCE OF DELEGATED POWERS.	SUB-DELEGATION	KEY
8.	Act as the Council's representative or to authorise a person to act as such, at the proceedings of a law suit in a Court for Small Claims and to sign all accompanying documents or papers.		Divisional Heads, Executive Managers and Managers	representative in a court for small claims
9.	Undertake the necessary steps i.e. due diligence and assessments required to establish municipal –owned entities.	MFMA S84(1)(b)	Divisional Heads and Executive managers	Establishment of MOUs
10.	Take steps to ensure that proper contract management system is developed, and upheld by the municipality.		Divisional Heads, Executive Manager and Manager	Development of Contract management system
11.	Ensure that the contract procured through the SCMP system is in writing, stipulate the terms and conditions of the contract, and in the case of a contract longer than 3 years provide for periodic review thereof once every three years		Divisional Heads, Executive Managers and Managers	Contract management

27-72

HOD: CORPORATE LEGAL SERVICES

These delegations must be read in conjunction with "THE GENERAL CONDITIONS OF DELEGATIONS AS CONTAINED IN THE COUNCIL OF DELEGATIONS OF POWERS" as well as any other relevant legislation and COE Policy

27-73

CITY OF EKURHULENI METROPOLITAN MUNICIPALITY "COE3"

ORDINARY COUNCIL MEETING

2025.11.27

ITEM A-CORP (32 – 2025)

RISK & LEGAL SERVICE DEPARTMENT: SECURITY OF TENURE: RESCISSION OF COUNCIL RESOLUTION AUTHORISING EXPROPRIATION OF IDENTIFIED LAND PORTIONS FOR PUBLIC PURPOSE OR INTEREST

1. PURPOSE

The purpose of the report is to recommend to Council the rescission of the resolution by Council to expropriate the land known as Portion 406 of the Farm Driefontein 85 IR - Boksburg, measuring 33,6847 hectares in extent, due to the Gauteng Department of Agriculture and Rural Development and Environment's (GDARDE) Record of Decision to refuse to grant an Environmental Authorisation (EA) for the planned housing development on the ground that a substantial portion of this land is wetland and cannot be utilised for purposes of human settlement.

2. STRATEGIC PRIORITY

Effective governance.

3. WARD/S AFFECTED.

All wards are affected.

4. IDP LINKAGE

Promoting good governance.

5. EXECUTIVE SUMMARY

The Council of the City of Ekurhuleni passed a resolution to expropriate Portion 406 of the Farm Driefontein 85 IR – Boksburg under item - A-RE (26 – 2018) on 27 September 2018.The purpose of the expropriation was to enable Human Settlements Department to develop houses thereby reducing the housing backlog in the City of Ekurhuleni (the City). It has now become apparent that the property so expropriated has environmental challenges leading to a negative record of decision that was issued by GDARDE to discontinue with the planned housing projects on the land in question.

6. BACKGROUND

The expropriation of the land being Portion 406 of the Farm Driefontein 85 IR – Boksburg was as a result of a Council resolution - A-RE (26 – 2018) adopted on 27 September 2018.A copy of the Council Resolution is attached hereto marked as **"Annexure A.** The notices of expropriation in this regard were published in the The Star, Beeld, and the Sowetan newspapers on the 6th of February 2019, with the expropriation date declared as being 30 April 2019. Copies of these publications are attached hereto as **"Annexures B1, B2 and B3"** respectively. The purpose for the expropriation was primarily to address the growing housing needs in the City. Thus, the provisions of section 25 of the Constitution of the Republic of South Africa – 1996, read in conjunction with those of the Housing Act – 1997, as well as those of the Expropriation Act – 1979, were invoked for these purposes. This was expropriation without compensation.

A contentious issue became that of compensation as the City offered no compensation, hence the previous owner resorted to litigation and issued summons under case number 8866/21 out of the High Court of South Africa, Gauteng Local Division, Johannesburg commencing legal action during February 2021 and claimed R30 050 000,00 million (thirty million and fifty

thousand rands) as compensation. In the meantime, parties have been ordered by the court to engage each other in the mediation process to possibly resolve and/ narrow issues through the mediation process. The court order directing mediation is attached hereto as **"Annexure C"** The trial in the matter has been set down for the 2nd of February 2026 in the event the mediation process fails. A notice of set down is attached hereto as **"Annexure D".**

Pursuant to an application for an Environmental Authorisation by the City submitted in 2023, GDARDE has on 17 May 2025 issued a negative Record of Decision – Gaut 002/23-24/E3804, citing that a significant portion of the site is impacted by the wetland.

The record of decision by GDARDE is attached hereto as **"Annexure E"** while the copy of the City's application is attached as **"Annexure F"**. The key findings of GDARDE are:

- A significant portion of the site is a wetland with waterlogged muddy soil;
- Development would destroy the wetland's critical ecological functions as a water purifier and flood retention system
- The geotechnical report indicates a shallow groundwater table supporting the finding of a widespread wetland.
- Informal mining adjacent to the site presents a serious risk to the stability beneath the surface. GDARDE specifically referenced the recent cave-in of the R21 southbound as a precedent indicating a direct and severe geotechnical risk of sinkholes;
- The site is deemed environmentally sensitive and impacts cannot be mitigated to acceptable levels.

The City has also identified and secured the services of an environmental consultant, PEnviro Holdings CC. Their report observes environmental constraints along the property such as wetlands, slopes, flood zones and protected areas and concludes that the property presents reasonable and sufficient reason for strict environmental consideration and the areas of high sensitivity must be excluded from the proposed developments. The said expert report is attached hereto as **"Annexure G."**

6.1 ADVICE ON PROSPECTS OF SUCCESS IN APPEALING THE NEGATIVE RECORD OF DECISION BY GDARDE.

Upon receipt of the record of decision by GDARDE, the CoE then sought services of a consultant on environmental studies to comment on the prospects of success should it be decided that an appeal be launched. In this regard, a firm Thevha Sustainable Services were appointed in their capacity as the Environmental Assessment Practitioners (EAP). The EAP has noted the presence of an artificial periodic wetland on site and advised that the only available option to be utilised as an appeal against the GDARDE record of decision entails biodiversity offsetting. According to EAP biodiversity offsetting, when implemented with integrity and transparency, can reconcile environmental protection with infrastructure and economic development. However, EAP has warned that there could be risks associated with the offsetting in that same requires that the wetland feature be destroyed, and a new wetland be created as environmental compensation with the same biophysical characteristics as the wetland lost to development. That means that, the City had to be prepared to have land available for offsetting. EAP has further warned that the biodiversity offsetting process is complex as it goes beyond environmental matters, geotechnical, structural and stormwater management incorporation towards the area of interest for development. EAP recommended

that the City engages with its own Environmental Department for further advise on biodiversity offsetting.

CoE's internal Environmental Resource and Waste Management (Compliance Division) was then requested to comment on the advice provided by the consultant. Comments received from the said Department was that they do not support the biodiversity offsetting initiative due thereto that in terms of the Ekurhuleni Bioregional Plan, 2020, the environmental protection target of Critical Biodiversity Areas (CBA) for 2025 should be 50%, however the City is way below reaching the target. Hence, they recommended that the current functional CBAs should not be transformed due to developments. They further advised that the options for identifying and securing offsets land within the City with regard to terrestrial ecosystems are limited. They concluded that no development should be permitted in wetland areas or within the buffers. From the aforementioned, it is clear that the the Compliance Division considered and formulated a strong view that the CoE should not appeal the RoD based on the biodiversity offsetting. Copies of comments from both the EAP and our Compliance Division are attached hereto and referred to as **"Annexures H and I"** respectively.

6.2 SETTLEMENT PROPOSAL BY BUSINESS VENTURE

The first session of the mediation process alluded to above, took place on the 23rd October 2025 in Sandton. The session was attended to by the legal representatives of both parties, and the independent mediator that was agreed upon by the parties. The following settlement proposal was advanced by the Plaintiff's legal representatives for the CoE's consideration:

- the Plaintiff will accept compensation of R30 million for the expropriation of the property; and
- further that a legal costs contribution in the amount of R5 million be made by the CoE. A copy of their written settlement proposal is attached hereto as **"Annexure J"**.

6.3 SETTLEMENT PROPOSAL FROM THE CITY'S LEGAL TEAM

The legal team representing the City in the matter consisting of Lusenga Attorneys, Adv William Mokhare SC and Adv Lerato Phasha has rendered legal opinion regarding the resolution of this matter. The legal team has advised that the Council resolution authorising expropriation be rescinded in light of the GDARDE record of decision. Upon rescission, the City must bring a two-part urgent court application. First, to interdict/stay the trial that is set down for February 2026. Secondly, to review and set aside the expropriation process that was followed subsequent to the Council resolution. The legal team has advised that it would not make economic sense to incur substantial legal costs defending a matter for a land that is unsuitable human settlement. The trial has been set down for 18 days in the High Court and legal fees to be incurred are likely to exceed R5 million. The legal opinion is attached hereto as **"Annexure K."**

6.4 RECOMMENDATION BY RISK AND LEGAL SERVICES

In light of the GDARDE record of decision regarding the unsuitability of the land for human settlement and the comments from the Environmental Department that the rehabilitation of the land is not supported, Risk and Legal Services Department recommends that the Council resolution authorising the expropriation of the land be rescinded and further that legal

proceedings be instituted to stay the trial and review and set aside the expropriation. It follows therefore that the settlement proposals by the Plaintiff (Business Venture Investments) referred to elsewhere in this report, may not be acceptable and favourable in protecting the CoE's interests.

6.5 CONCLUSION

Considering the GDARDE's record of decision to refuse Council to develop houses at the property for reasons advanced therein, it would mean conclusively that the land has severe environmental constraints and therefore unsuitable for any development. To save the CoE unnecessary legal costs associated in protracted litigation, it would be prudent not to continue with the trial and reverse the decision to expropriate the land in question.

7. COMMENTS FROM RELEVANT DEPARTMENTS

Comments were received and have been attached herein as Annexures.

8. LIST OF ANNEXURE/S

Annexure A: Council Resolution A-RE (26-2018).
Annexure B: Publications- notification to the public.
Annexure C: Court Order- directing mediation.
Annexure D: Notice of Set Down – Trial date.
Annexure E: GDARDE's Record of Decision, dated 17 May 2025.
Annexure F: CoE's Application for authorisation.
Annexure G: Expert's Report appointed by the CoE.
Annexure H: Environmentalist comments – Consultant.
Annexure I: Environmentalist comments – internal Department.
Annexure J: Settlement Proposals by the Plaintiff.
Annexure K: Legal Opinion by the CoE's legal team.
Annexure L: Development Planning & Real Estate comments.
Annexure M: Human Settlements comments.

9. RECOMMENDATION

1. **That** the report by the Risk & Legal Services Department, on the rescission of the previous Council resolution under item A-RE (26-2018) adopted on 27th September 2018, **BE NOTED**.

2. **That** the previous resolution by Council under **Item A-RE (26 – 2018)** adopted on 27th September 2018, **BE RESCINDED**.

3. **That** the Risk and Legal Services Department, **BE AUTHORISED** upon rescission of the Council Resolution as contemplated in recommendation 2 above, to institute legal proceedings to review and set aside the expropriation without compensation of Portion 406 of Farm Driefontein 85 IR- Boksburg and interdict/stay the upcoming trial scheduled for 2 February 2026.

M

LUSENGA
ATTORNEYS . CONVEYANCERS . NOTARIES

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"COE4"

Our Reference : CIT021D#193
Your Reference : AVN/sg/0045667
Office Number : (010) 448 7398
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Email Address : sibusiso@lusengainc.co.za
: rendani@lusengainc.co.za
Date : 09 December 2025

MCROBERT ATTORNEYS INC.

Attention : Adriaan van Niekerk

Email : avniekerk@macrobert.co.za

Dear Mr van Niekerk,

RE: BUSINESS VENTURE INVESTMENTS 900 (PTY) LTD // THE CITY OF EKURHULENI METROPOLITAN

1. We refer to your letter dated 8 December 2025, and the contents thereof have been noted.

2. Our client's failure to respond comprehensively to the contents thereof is not to be construed to be the admission of the correctness of same.

3. Our client denies that it has frustrated the mediation and that it has participated in the mediation in bad faith. Our client has participated in good faith in the mediation process with the view of reaching common ground but unfortunately the mediation process as articulated in your letter did not result in an amicable settlement.

4. With regard to the allegation that your client understood Adv. Njabulo Zulu ("Adv. Zulu") to have been clothed with powers to bind the city and agree to your client's settlement proposal without the involvement of the council, we find it difficult to comprehend how your client would have thought that Adv. Zulu would have such powers especially when the matter under consideration involves the expropriation of property.

Directors: Ephraim Lusenga LLB (UKZN) | Sibusiso Lusenga LLB (UJ) | Lelanie Buchman LLB, BCom Law (UNISA), Conveyancer & Notary
Senior Associates: Rendani Tshiswayise LLB (UNISA) | Tessa Naransamy LLB (UNISA) | Nombuso Lusenga – Sambo LLB (UL)
Associates: Zethembile Madonsela LLB (UP) | Talent Mabunda LLB (UJ) | Sechaba Makgobenyane LLB (UFS) | Nomakwezi Ngqaleni LLB (NUL)
Practicing Consultants: Igor Szopinski LLB (WITS)

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5. Adv. Zulu was mandated to represent the interest of the city in the mediation and to communicate to the city any settlement proposals made in order for the city council to take a decision.

6. The city council did ultimately consider your client's proposal for payment of R35 million and that settlement proposal was rejected by the council.

7. On 4 December 2025 council adopted a resolution in which it rescinded its expropriation decision. The effect of the rescission of the expropriation decision will trigger a process to give legal effect to that rescission.

8. Our client will first seek consent from your client in terms of section 23 of the expropriation Act to cancel or withdraw the expropriation decision so that the land revert to your client, and the self-review will be launched only in the event your client refuses to grant consent.

9. The basis of the withdrawal of the expropriation decision and its ultimate setting aside is inter alia that the expropriation cannot be justified in law as in the public interest and for housing purposes given that the expropriated property is not suitable for housing let alone for human habitation. In light of this the substratum of the expropriation fall away.

Yours faithfully,

LUSENGA ATTORNEYS INCORPORATED

AS PER: MR S. LUSENGA

MacRobert
Attorneys
Your strategic partner at law

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LUSENGA ATTORNEYS

BY EMAIL

URGENT

YOUR REF:

OUR REF:
AVN/00045667

DATE:
11 December 2025

Dear Sirs,

BUSINESS INVESTMENT VENTURES 900 (PTY) LTD / CITY OF EKURHULENI
CASE NUMBER 8866/2021

1. We refer to the mediation proceedings in the abovementioned matter, as well as your letter of 09 December 2025.

2. We record the following chronology:

3.1 The expropriation notice was received by our client in February 2019. The date of expropriation was 30 April 2019.

3.2 Summons was issued by our client in February 2021.

3.3 Since 2021, there has been a consistent pattern of delays on the part of your client throughout the litigation. Your client's conduct has necessitated multiple applications to compel compliance with its procedural obligations, and your client has repeatedly failed to honour undertakings made to both our office and even the Deputy Judge President. These failures have required intervention by the Court on several occasions. This sustained pattern of delays has caused our client severe prejudice, including the incurring of substantial legal costs and significant lost opportunity costs over an extended period.

3.4 Our client eventually launched an application to strike your client's defence, in July 2025, on account of your client's failure to comply with a court order of June 2025 to file certain documents. Following last-minute negotiations between our respective firms to avoid the

Conveyancers, Notaries & Trade Mark Agents

Directors: GP van der Merwe (Chairman), SM Jacobs, CA Wessels, N Caine, J Albertse, S van der Merwe, KM Greig, JA Erasmus, JD van Broekhuizen
CN Groenewald, AS van Niekerk, L Gani, JC Jansen van Rensburg, JB Mayaba, J Naidoo, A Aberder, K Zybrands, KM Wykes
FA Dreyer, T Booyse, DT Vraagom, RM Masolo, K Sehanka, MGK Moshoeshoe, K Tumbe Diong
Consultants: DE Pfaff, T Charters, NA Janse van Rensburg, KF Ussuph, TM Nwedamutsu, JF de Beer, KC Cameron
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H Verwey, E Fourie, SL Mahlangu, A Griesel, T Dreyer, A Hassim
Associates: ET Khuzwayo, TNN Molefe, A Nxasana, C Maas, JR Myers, APJ Wessels, P Naidoo, R Suping, PT Motshele
TV Phahla, CC Williams, F Masedi, RL Munusamy, B Moshe, HZ Christodoulides

defence from being struck, a court order was issued on 14 August 2025 compelling your client to participate in the mediation on 31 October 2025, with Adv Tlali as the appointed mediator.

3.5 On 15 October 2025, the legal representatives attended a pre-mediation meeting. At this meeting it was expressly recorded by the writer hereof that your client must ensure that they are represented at the mediation by a person or persons holding a proper and sufficient mandate to negotiate and to conclude a settlement in respect of the issues in dispute. This was specifically raised to avoid embarking on a process that would be rendered futile by any lack of authority on the part of your client's representatives. You unequivocally assured us that this requirement would be met.

3.6 In clause 3.1 of the signed mediation agreement, your client again confirmed that it would be represented by a person or persons who have the authority to negotiate and settle the matter, or, where instructions have to be obtained, it would be obtained without undue delay and in a manner that would not frustrate the mediation process.

3.7 Your client also undertook, in the mediation agreement, to conduct the mediation in good faith.

3.8 The mediation commenced on 31 October 2025. At the commencement of the mediation, your client's representative, Mr. Zulu (who we understand to be your client's Head of Legal), again confirmed that he had the mandate to negotiate and settle the matter on behalf of your client.

3.9 However, at the conclusion of the mediation session on 31 October 2025, when the plaintiff submitted a settlement proposal for your client's consideration, Mr. Zulu unexpectedly advised that he was unable to agree to any settlement (notwithstanding, his earlier confirmation that he possessed the necessary mandate). He further stated that a meeting of the City Council would have to be convened to consider the settlement proposal. Mr. Zulu declined to provide even an indication that he would support the settlement proposal, despite the fact that all the parties present at the mediation appeared to agree on the proposed terms. He did, however, indicate that they will attempt to arrange a special meeting of Council for the week of 3 November 2025 to consider the settlement proposal as a matter of urgency.

3.10 At all times during the mediation the discussions related to our client's claim for compensation. The issue of reviewing and setting aside your client's 2019 decision to expropriate the property was never mentioned.

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3.11 Our client's settlement proposal was submitted to you in writing on 3 November 2025.

3.12 On 6 November 2025 you informed us that the Council resolution is only expected on 14 November 2025, providing no explanation for the delay.

3.13 On 13 November 2025 you indicated that you did not anticipate having a signed resolution from your client by 17 November 2025. Although you assured us that your client was "expediting" the matter, no explanation was provided as to why it was already clear, at that stage, that no resolution would be received by 17 November 2025.

3.14 A further meeting was held with the mediator on 17 November 2025. At this meeting, you indicated that the Mayoral Committee was considering our client's settlement proposal that very day, and that the settlement proposal would be submitted to Council only if approved by the Mayoral Committee. This process, requiring prior consideration by the Mayoral Committee before submitting same to Council, is contrary to what was presented to us by Mr. Zulu in the mediation on 31 October 2025. This inconsistency casts significant doubt on the bona fides of the undertakings given by your client's representative.

3.15 On 17 November 2025, you failed to provide the resolution as previously undertaken, but you undertook to revert to us before 5pm on 19 November 2025 with an update on the prospects of the matter being settled. As explained to you, this undertaking was necessary to enable our client to determine whether preparation for the trial should resume, given that approximately three weeks had already been wasted since the commencement of the mediation.

3.16 On 19 November 2025, at 18:43, you informed us that the settlement proposal will be presented to Council on 27 November 2025. You failed to give any indication as to the possibility of the settlement proposal being accepted. Our client was simply expected to suspend its trial preparation for another week without any explanation or justification.

3.17 On 20 and 29 November 2025 we requested further information from you, to help our client make an informed decision on the way forward. Both requests went unanswered.

3.18 On 27 November 2025, at 20:59, we enquired about the outcome of Council's consideration of the matter. On 28 November 2025 you informed us that your "*client has indicated*" that you will receive the resolution and further instructions before the end of the day.

3.19 Late on 28 November 2025 we received a letter from you indicating that the matter was not considered by Council as they seemed to have run out of time to address this matter

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on the day. The matter was then again postponed to 2 December 2025. We recorded our client's concern that, despite the urgency of the matter which was repeatedly emphasised by our client and your previous assurances that this matter will be prioritised by your client, the matter was clearly not being treated as a priority by your client.

3.20 After the matter was considered by Council on 2 December 2025, you had a meeting with the mediator on 3 December 2025. After your meeting, the mediator advised the writer hereof that you have discussed with her the resolution passed by Council which was known to your firm and counsel, but that you were consulting senior counsel on 4 December 2025 for senior counsel to assist with the proper wording of the letter to communicate the decision to us.

3.21 On 4 December 2025 we received a letter indicating that your client did not accept the settlement offer. However, surprisingly, you say in the letter that a "*detailed response will follow in the coming week, as we are currently awaiting a copy of the relevant Council Resolution.*" We wish to note that in light of the mediator's indication that you had already discussed the passed resolution with her, we are unable to accept this to be a truthful communication.

3.22 On 5 December 2025, the mediator addressed an email expressing her "*concern regarding the way the Defendant has communicated in this matter*", noting in particular her impression that not all available information is being shared with the plaintiff and that your communications lack transparency. She further requested for you "*to indicate … if the Plaintiff should proceed with preparations for trial*".

3.23 On 9 December 2025 you indicate that your client adopted a decision on 4 December 2025 in terms of which it rescinded the decision to expropriate. This decision was made approximately 7 years after the original decision to expropriate was passed by your client. No reason whatsoever was provided for the delay. Our client submits that there cannot be any justification.

3. It is our client's instructions to record that they do not consent to the cancellation or withdrawal of the 2019 decision to expropriate. Any application for self-review of that decision will be opposed on the basis that it is late, there is no basis to grant condonation, and it is devoid of any merit.

4. Furthermore, our client insists on the trial proceeding on 2 February 2026. We will continue with our preparation for the hearing.

5. We record that, should the trial be postponed, our client will seek a punitive costs order against your client on attorney and own client scale, including the costs of two senior counsel and a junior counsel on scale C, including counsel's collapse fees for 18 court days for which they have been reserved.

6. As you are aware, this matter has been allocated for hearing to Judge Vally. This letter will be shared with his registrar to keep the honourable judge apprised of developments. Accordingly, this letter will be filed on CaseLines.

Yours sincerely

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