

IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

CASE NUMBER: CCT89/09

In the matter of:-

SOUTH AFRICAN COUNCIL FOR CONSULTING
PROFESSIONAL PLANNERS ("SACCPP")

First Applicant
(Second *Amici Curiae* in the
application for confirmation of
constitutional invalidity ["the
confirmation application"])

SNOWY OWL PROPERTIES 90 (PTY) LTD
[Registration No. 2005/033934/07]

Second Applicant

HOMEGOLD DEVELOPMENT 1998 (PTY) LTD
[Registration No. 2001/003540/07]

Third Applicant

GREENFIELDS GARDENS (PTY) LTD
[Registration No. 2007/006985/07]

Fourth Applicant

SCARLET IBIS INVESTMENTS 202 (PTY) LTD
[Registration No. 2007/009329/07]

Fifth Applicant

and

CITY OF JOHANNESBURG METROPOLITAN
MUNICIPALITY

First Respondent
(Applicant in the confirmation
application)

GAUTENG DEVELOPMENT TRIBUNAL

Second Respondent
(First Respondent in the
confirmation application)

GAUTENG DEVELOPMENT APPEAL TRIBUNAL

Third Respondent
(Second Respondent in the
confirmation application)

IVORY PALM PROPERTIES 20 CC

Fourth Respondent
(Third Respondent in the
confirmation application)

VAN DER WESTHUIZEN, PIETER MARTHINUS

Fifth Respondent
(Fourth Respondent in the
confirmation application)

VAN DER WESTHUIZEN, ELFREDA ELIZABETH

Sixth Respondent
(Fifth Respondent in the
confirmation application)

MINISTER OF RURAL DEVELOPMENT AND LAND REFORM [FORMERLY THE LAND AFFAIRS]

Seventh Respondent
(Sixth Respondent in the confirmation application)

MEMBER OF THE EXECUTIVE COUNCIL FOR DEVELOPMENT, PLANNING AND LOCAL GOVERNMENT, GAUTENG PROVINCE

Eighth Respondent
(Seventh Respondent in the confirmation application)

MEMBER OF THE EXECUTIVE COUNCIL FOR LOCAL GOVERNMENT AND TRADITIONAL AFFAIRS, KWAZULU-NATAL PROVINCE

Ninth Respondent
(First Intervening Party in the confirmation application)

ETHEKWINI METROPOLITAN MUNICIPALITY

Tenth Respondent
(Second Intervening Party in the confirmation application)

THE DEPARTMENT OF AGRICULTURE, RURAL DEVELOPMENT AND LAND ADMINISTRATION, MPUMALANGA PROVINCE

Eleventh Respondent
(Third Intervening Party in the confirmation application)

SOUTH AFRICAN PROPERTY OWNERS ASSOCIATION ("SAPOA")

Twelfth Respondent
(First *Amicus Curiae* in the confirmation application)

MEMBER OF THE EXECUTIVE COUNCIL FOR ECONOMIC DEVELOPMENT, GAUTENG PROVINCE

Thirteenth Respondent

MEMBER OF THE EXECUTIVE COUNCIL FOR CO-OPERATIVE GOVERNANCE, HUMAN SETTLEMENT AND TRADITIONAL AFFAIRS, LIMPOPO PROVINCE

Fourteenth Respondent

MEMBER OF THE EXECUTIVE COUNCIL FOR LOCAL GOVERNMENT AND TRADITIONAL AFFAIRS, EASTERN CAPE PROVINCE

Fifteenth Respondent

MEMBER OF THE EXECUTIVE COUNCIL FOR LOCAL GOVERNMENT AND TRADITIONAL AFFAIRS, NORTH-WEST PROVINCE

Sixteenth Respondent

MEMBER OF THE EXECUTIVE COUNCIL FOR AGRICULTURE, RURAL DEVELOPMENT AND LAND ADMINISTRATION, MPUMALANGA PROVINCE

Seventeenth Respondent

NOTICE OF MOTION

TAKE NOTICE that the abovementioned Applicants intend making application to this Court for an order:

1. That this application be heard as one of urgency in terms of Rule 12 of the Rules of this Honourable Court and that the Honourable Chief Justice dispenses with the forms and service provided for in the Rules and Practice Directions, so as to allow this matter to be heard prior to 17 June 2012, being the date upon which the 24 month period of suspension of the order of constitutional invalidity of Chapters V and VI of the Development Facilitation Act 67 of 1995 ("the DFA") made by this Honourable Court on 18 June 2010 ("the Order") lapses;
2. Directing that this matter be enrolled for hearing by no later than 15 June 2012;
3. That the Applicants be granted direct access to this Honourable Court;
4. That the period of suspension of the order of constitutional invalidity of Chapters V and VI of the DFA be extended for a further period of 24 months until 16 June 2014 or until the Spatial Planning and Land

Use Management Bill and its transitional provisions dealing with land development applications in terms of the DFA is enacted and comes into operation or until any similar legislation is enacted and implemented, whichever occurs first;

5. That during the extended period of suspension in terms of 3 above, the conditions imposed by this Honourable Court in paragraphs 95.8(a) – (d) of its Order dated 18 June 2009 will remain applicable;
6. Subject to 4 and 5 above, tribunals established in terms of the DFA, its members and office bearers appointed in terms thereof and all other functionaries referred to in Chapters V and VI of the DFA and Regulations made in terms of the DFA (“the DFA Regulations”) will retain and exercise all powers and functions provided for in Chapters V and VI of the DFA and in the DFA Regulations until such time as all applications for the establishment of land development areas in terms of Chapters V and VI of the DFA have been finalised and implemented and all administrative aspects incidental to such applications have been finalised, including appeals to appeal tribunals established terms of the DFA; and
7. Further and/or alternative relief.

TAKE NOTICE that the accompanying affidavit of IVAN WENTZEL PAUW will be used in support thereof.

TAKE FURTHER NOTICE that the Applicants have appointed the address at the end hereof at which they will accept notice and service of all process in these proceedings.

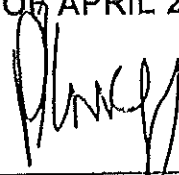
TAKE NOTICE FURTHER that if you intend opposing this application, you are required to:

- (a) notify the Applicants' attorney in writing on or before 16:00 on Wednesday, 2 May 2012;
- (b) on or before 16:00 on Friday, 18 May 2012, to file your answering affidavits, if any; and
- (c) appoint in such notification an address at which you will accept notice and service of all documents in these proceedings.

TAKE NOTICE FURTHER that the Applicants intend filing a replying affidavit by 16:00 on Wednesday, 23 May 2012, should answering affidavits be filed timeously.

If no such notice of intention to oppose is given, the Applicants will request the Registrar to place the matter before the Honourable Chief Justice in terms of Rule 12(1).

SIGNED AT PRETORIA ON THIS THE 23rd DAY OF APRIL 2012



IVAN PAUW & PARTNERS
Attorneys for Applicants
448C Sussex Avenue
cor. Rodericks & Sussex Avenue
Lynnwood, Pretoria
Tel: (012) 369 9180
Fax: (012) 361 5591
Ref: p kruger/KD0065
E-mail: pierre@ippartners.co.za
C/O A J STONE ATTORNEYS
East Wing, Ground Floor
H Santos Building
30 Arena Close
Bruma
Tel: (011) 622 9302
Fax: (011) 622 9389
Ref: aj stone

TO: THE REGISTRAR
Constitutional Hill
Braamfontein
Johannesburg

**AND TO: CITY OF JOHANNESBURG
METROPOLITAN MUNICIPALITY**
First Respondent
(Applicant in the application for confirmation of constitutional
invalidity ["the confirmation application"])
Metropolitan Centre, Loveday Street
Braamfontein, Johannesburg
c/o Moodie & Robertson
9th Floor, 209 Smit Street
Braamfontein
Johannesburg

_____ Copy hereof received on this the
_____ day of _____ 2012
Time: _____

AND TO: GAUTENG DEVELOPMENT TRIBUNAL
Second Respondent
(First Respondent in the confirmation application)
cnr. Commissioner and Sauer Streets, Johannesburg
C/O THE STATE ATTORNEY
10th Floor, North State Building
cnr. Market and Kruis Streets
Johannesburg

_____ Copy hereof received on this the
_____ day of _____ 2012
Time: _____

AND TO: GAUTENG DEVELOPMENT APPEAL TRIBUNAL
Third Respondent
(Second Respondent in the confirmation application)
cnr. Commissioner and Sauer Streets, Johannesburg
C/O THE STATE ATTORNEY
10th Floor, North State Building
cnr. Market and Kruis Streets
Johannesburg

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_____ day of _____ 2012
Time: _____

AND TO: IVORY PALM PROPERTIES 20 CC
Fourth Respondent
(Third Respondent in the confirmation application)
Kruin Mediese Sentrum
cnr Ruhamah and Bank Avenues
Helderkruin
C/O HERMAN VAN DER MERWE & DUNBAR
C/O BOTHA & SUTHERLAND
4th Floor, Marble Towers
cnr. Jeppe and Von Willich Streets
Johannesburg

Copy hereof received on this the
day of _____ 2012
Time: _____

AND TO: VAN DER WESTHUIZEN, PIETER MARTHINUS
Fifth Respondent
(Fourth Respondent in the confirmation application)
228 Baansyfer Avenue, Ruimsig
C/O ROTH WESSELS MALULEKE
C/O HOOYBERG ATTORNEYS
Block B, Library Office Park
14 Payne Road (off William Nicol Drive)
Bryanston, Johannesburg

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day of _____ 2012
Time: _____

AND TO: VAN DER WESTHUIZEN, ELFREDA ELIZABETH
 Sixth Respondent
 (Fifth Respondent in the confirmation application)
 228 Baansyfer Avenue, Ruimsig
C/O ROTH WESSELS MALULEKE
C/O HOOYBERG ATTORNEYS
 Block B, Library Office Park
 14 Payne Road (off William Nicol Drive)
 Bryanston, Johannesburg

_____ Copy hereof received on this the
 _____ day of _____ 2012
 Time: _____

AND TO: MINISTER OF RURAL DEVELOPMENT AND LAND REFORM [FORMERLY MINISTER OF LAND AFFAIRS]
 Seventh Respondent
 (Sixth Respondent in the confirmation application)
C/O THE STATE ATTORNEY
 10th Floor, North State Building
 cnr. Market and Kruis Streets
 Johannesburg

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 Time: _____

AND TO: MEMBER OF THE EXECUTIVE COUNCIL FOR DEVELOPMENT, PLANNING AND LOCAL GOVERNMENT, GAUTENG
 Eighth Respondent
 (Seventh Respondent in the confirmation application)
C/O THE STATE ATTORNEY
 10th Floor, North State Building
 cnr. Market and Kruis Streets
 Johannesburg

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 _____ day of _____ 2012
 Time: _____

AND TO: MEMBER OF THE EXECUTIVE COUNCIL FOR LOCAL GOVERNMENT AND TRADITIONAL AFFAIRS, KWAZULU-NATAL PROVINCE
 Ninth Respondent
 (First Intervening Party in the confirmation application)
C/O THE STATE ATTORNEY
 10th Floor, North State Building
 cnr. Market and Kruis Streets
 Johannesburg

_____ Copy hereof received on this the
 _____ day of _____ 2012
 Time: _____

AND TO: ETHEKWINI METROPOLITAN MUNICIPALITY
 Tenth Respondent
 (Second Intervening Party in the confirmation application)
 c/o The Municipal Manager
 City Hall, Dr Pixley KaSeme Street
 Durban
 KwaZulu-Natal

_____ Copy hereof received on this the
 _____ day of _____ 2012
 Time: _____

AND TO: THE DEPARTMENT OF AGRICULTURE, RURAL DEVELOPMENT AND LAND ADMINISTRATION, MPUMALANGA PROVINCE
 Eleventh Respondent
 (Third Intervening Party in the confirmation application)
 50 Murray Street
 Nelspruit
C/O THE STATE ATTORNEY
 10th Floor, North State Building
 cnr. Market and Kruis Streets
 Johannesburg

_____ Copy hereof received on this the
 _____ day of _____ 2012
 Time: _____

AND TO: SOUTH AFRICAN PROPERTY OWNERS ASSOCIATION
("SAPOA")
Twelfth Respondent
(First *Amicus Curiae* in the confirmation application)
Building 2, Hunts End Office Park
36 Wierda Road West, Wierda Valley
Sandton
Johannesburg

Copy hereof received on this the
_____ day of _____ 2012
Time: _____

AND TO: MEMBER OF THE EXECUTIVE COUNCIL FOR ECONOMIC
DEVELOPMENT, GAUTENG PROVINCE
Thirteenth Respondent
C/O THE STATE ATTORNEY
SALU Building
255 Schoeman Street, Pretoria
Tel: (012) 309 1500
Fax: (012) 328 2662/3

RECEIVED
PROVINCIAL GOVERNMENT
2012-04-24
STATE ATTORNEY
PRETORIA

RECEIVED
PROVINCIAL GOVERNMENT
PRETORIA

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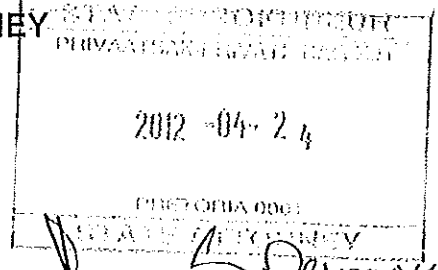
AND TO: MEMBER OF THE EXECUTIVE COUNCIL FOR CO-
OPERATIVE GOVERNANCE, HUMAN SETTLEMENT AND
TRADITIONAL AFFAIRS, LIMPOPO PROVINCE
Fourteenth Respondent
Limpopo Provincial Government: Legal Services
Litigation Division, Nowaneng Building
40 Hans Van Rensburg Street, Polokwane
Fax: (015) 291 5336; 287 6443 for attention Adv PC
Rammutla)
Email: rammutlac@premier.norprov.gov.za

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Time: _____

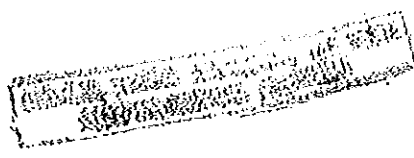
AND TO: MEMBER OF THE EXECUTIVE COUNCIL FOR LOCAL GOVERNMENT AND TRADITIONAL AFFAIRS, EASTERN CAPE PROVINCE
 Fifteenth Respondent
 Tyamazafhe Building, Phalo Avenue, Bisho
C/O THE STATE ATTORNEY
 29 Western Road, Central, Port Elizabeth
 Fax: (041) 585 2687
 Email: acrozier@justice.gov.za, For attention: Mr Crozier

AND TO: MEMBER OF THE EXECUTIVE COUNCIL FOR LOCAL GOVERNMENT AND TRADITIONAL AFFAIRS, NORTH-WEST PROVINCE
 Sixteenth Respondent
 Cor. Albert Luthuli and Gerrit Maritz Streets
 Ramosa Riekert Building, Dassierand
 Potchefstroom For attention: Maryke van Heerder
And C/O THE STATE ATTORNEY
 44 Shippard Street, Mafikeng
 Fax: (018) 384 3594 / 381 1575
 Email: jzwegelaar@justice.gov.za

AND TO: MEMBER OF THE EXECUTIVE COUNCIL FOR AGRICULTURE, RURAL DEVELOPMENT AND LAND ADMINISTRATION, MPUMALANGA PROVINCE
 Seventeenth Respondent
 50 Murray Street, Nelspruit
C/O THE STATE ATTORNEY
 SALU Building
 255 Schoeman Street
 Pretoria
 Tel: (012) 309 1500
 Fax: (012) 328 2662/3



Copy hereof received on this the _____ day of _____ 2012
 Time: 10:25



IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

CASE NUMBER: CCT89/09

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SOUTH AFRICAN COUNCIL FOR CONSULTING
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[Registration No. 2005/033934/07]

Second Applicant

HOMEGOLD DEVELOPMENT 1998 (PTY) LTD
[Registration No. 2001/003540/07]

Third Applicant

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[Registration No. 2007/006985/07]

Fourth Applicant

SCARLET IBIS INVESTMENTS 202 (PTY) LTD
[Registration No. 2007/009329/07]

Fifth Applicant

and

CITY OF JOHANNESBURG METROPOLITAN
MUNICIPALITYFirst Respondent
(Applicant in the confirmation
application)GAUTENG DEVELOPMENT TRIBUNALSecond Respondent
(First Respondent in the
confirmation application)GAUTENG DEVELOPMENT APPEAL TRIBUNALThird Respondent
(Second Respondent in the
confirmation application)IVORY PALM PROPERTIES 20 CCFourth Respondent
(Third Respondent in the
confirmation application)VAN DER WESTHUIZEN, PIETER MARTHINUSFifth Respondent
(Fourth Respondent in the
confirmation application)VAN DER WESTHUIZEN, ELFREDA ELIZABETHSixth Respondent
(Fifth Respondent in the
confirmation application)

MINISTER OF RURAL DEVELOPMENT AND LAND REFORM [FORMERLY THE LAND AFFAIRS]

Seventh Respondent
(Sixth Respondent in the confirmation application)

MEMBER OF THE EXECUTIVE COUNCIL FOR DEVELOPMENT, PLANNING AND LOCAL GOVERNMENT, GAUTENG PROVINCE

Eighth Respondent
(Seventh Respondent in the confirmation application)

MEMBER OF THE EXECUTIVE COUNCIL FOR LOCAL GOVERNMENT AND TRADITIONAL AFFAIRS, KWAZULU-NATAL PROVINCE

Ninth Respondent
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ETHEKWINI METROPOLITAN MUNICIPALITY

Tenth Respondent
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THE DEPARTMENT OF AGRICULTURE, RURAL DEVELOPMENT AND LAND ADMINISTRATION, MPUMALANGA PROVINCE

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Twelfth Respondent
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Thirteenth Respondent

MEMBER OF THE EXECUTIVE COUNCIL FOR CO-OPERATIVE GOVERNANCE, HUMAN SETTLEMENT AND TRADITIONAL AFFAIRS, LIMPOPO PROVINCE

Fourteenth Respondent

MEMBER OF THE EXECUTIVE COUNCIL FOR LOCAL GOVERNMENT AND TRADITIONAL AFFAIRS, EASTERN CAPE PROVINCE

Fifteenth Respondent

MEMBER OF THE EXECUTIVE COUNCIL FOR LOCAL GOVERNMENT AND TRADITIONAL AFFAIRS, NORTH-WEST PROVINCE

Sixteenth Respondent

MEMBER OF THE EXECUTIVE COUNCIL FOR AGRICULTURE, RURAL DEVELOPMENT AND LAND ADMINISTRATION, MPUMALANGA PROVINCE

Seventeenth Respondent

FOUNDING AFFIDAVIT

I, the undersigned,

IVAN WENTZEL PAUW

do hereby make oath and say, the content which falls within my personal knowledge and are true and correct:

1. DEPONENT

1.1 I am a duly admitted attorney of the High Court of South Africa, practising as such as partner under the name and style of Ivan Pauw & Partners ("IP&P") at 448C Sussex Avenue, Lynnwood, Pretoria, Gauteng Province.

1.2 IP&P, the firm of which I am a partner, are the attorneys of record for the Applicants in this application for the further extension of the period of suspension of a declaration of constitutional invalidity of Chapters V and VI of the Development Facilitation Act 67 of 1995 ("the DFA") granted by the Honourable Court on 18 June 2010.

1.3 On 18 June 2010, this Honourable Court entertained, *inter alia*, an application for confirmation of the declaration of constitutional invalidity made by the Supreme Court of Appeal ("the confirmation



application"). A copy of the judgment of this Honourable Court in the confirmation application is attached hereto as Annexure "A1".

- 1.4 IP&P was the attorney of record for the South African Property Owners Association ("SAPOA") and the South African Council for Consulting Professional Planners ("SACCPP") in the confirmation application, which parties were duly admitted as *Amici Curiae* therein.

2. THE APPLICANTS

- 2.1 The First Applicant is the **SOUTH AFRICAN COUNCIL FOR CONSULTING PROFESSIONAL PLANNERS ("SACCPP")**, the Second *Amicus Curiae* in the confirmation application.
- 2.2 The Second Applicant is **SNOWY OWL PROPERTIES 90 (PTY) LTD** (Registration No. 2005/033934/07), a company duly incorporated in terms of the provisions of the South African company laws, with registered address at Route 21 Corporate Park, 90 Regency Drive, Irene, Gauteng Province, as is evidenced by a company search attached hereto marked Annexure "A2".
- 2.3 The Third Applicant is **HOMEGOLD DEVELOPMENT 1998 (PTY)**

LTD (Registration No. 2001/003540/07), a company duly incorporated in terms of the provisions of the South African company laws, with registered address at G01 Harrogate Park, 1237 Pretorius Street, Hatfield, Pretoria, Gauteng Province, as is evidenced by a company search attached hereto marked Annexure "A3".

2.4 The Fourth Applicant is **GREENFIELDS GARDENS (PTY) LTD** (Registration No. 2007/006985/07), a company duly incorporated in terms of the provisions of the South African company laws, with registered address at 21-7th Avenue, Parktown North, Johannesburg, Gauteng Province, as is evidenced by a company search attached hereto marked Annexure "A4".

2.5 The Fifth Applicant is **SCARLET IBIS INVESTMENTS 202 (PTY) LTD** (Registration No. 2007/009329/07), a company duly incorporated in terms of the provisions of the South African company laws, with registered address at 1st Floor, Joubert Plaza, cor. Meade and Market Streets, George, Western Cape Province, as is evidenced by a company search attached hereto marked Annexure "A5".

2.6 SAPOA, herein cited as the Twelfth Respondent, was also admitted

as *Amicus Curiae* in the confirmation application but elected not to join these proceedings. The position of SAPOA is set out in a press statement dated January 2012, annexed hereto as Annexure "A6".

2.7 The Second to Fifth Applicants are property developers who continued to make use of the provisions of Chapter V and VI of the DFA and who are dependant upon the continued functioning of tribunals established in terms of the DFA to finalise their developments, particulars of which will be provided hereunder. They are individual members of SAPOA and are prominent role-players in the land development industry within the Gauteng, Mpumalanga and Limpopo Provinces. They all have a direct and substantial interest in the relief herein sought for the reasons set out in the paragraphs which follow.

2.8 I was requested by SACCPP and the developers to depose to this affidavit due to the intimate knowledge that I possess relating to:

2.8.1 the DFA process and procedures; and

2.8.2 progress made regarding the preparation of alternative national and provincial legislation that will, eventually, supersede the DFA, when repealed.



2.9 A brief synopsis of my experience in the DFA land development procedures is as follows:

2.9.1 I was a member of the first development tribunal established in the Gauteng Province after the coming into operation of the DFA in 1995 and acted as presiding officer over hearings of the said tribunal in approximately 50 applications for the establishment of land development areas in the Gauteng Province;

2.9.2 I am an attorney who specialises in the land development and environmental law. I have represented applicants, objectors, interested parties, municipalities, provincial government and other role players within the land development industry in approximately 250 hearings before the development tribunals in Gauteng, Limpopo, Mpumalanga, KwaZulu-Natal, North-West and Eastern Cape Provinces;

2.9.3 I represented the Second to Fifth Applicants in procuring approval for the establishment of land development areas in terms of the DFA. I hereby provide an abbreviated summary of one of many developments applied for by each of the Second – Fifth Applicants:



2.9.3.1 The Second Applicant was granted approval in terms of the DFA, for the development as depicted on the layout plan attached hereto marked Annexure "A7", for the following development:

(a) Name of development:

Zwartkoppies Extensions 1 to 26

(b) Property Description:

Remainder of Portion 2 and Portions 8 and 9 of the Farm Zwartkoppies 346 JR.

(c) Property location:

North of the N4, between the Hans Strydom and Donkerpoort interchanges (City of Tshwane Metropolitan Municipality).

(d) Property extent:

634.3290 hectares



(e) Description of development:

Mixed land use development consisting of 6285 residential (subsidised, bonded and middle income) units, 22 hectares for business, 22 hectares for education, 37 hectares for commercial and subsidiary land uses.

(f) Date of approval:

14 January 2009.

(g) Status of development:

General Plans for first extensions currently being prepared (Section 37 of the DFA) and composite Services Agreements currently being negotiated (Section 40 of the DFA).

2.9.3.2

The Third Applicant was granted approval in terms of the DFA, for the development as depicted on the layout plan attached hereto marked Annexure "A8", for the following

development:

(a) Name of development:

Gem Valley Extensions 1 to 5.

(b) Property Description:

Portions 81, 82, 86 and Portion of Portion 80 and 83 of
the Farm Franspoort 332 JR.

(c) Property location:

Between Zambezi Road and Mahube Valley Extension
1, City of Tshwane Metropolitan Municipality.

(d) Property extent:

Approximately 89 hectares

(e) Description of development:

Predominantly residential (subsidised, GAP and



bonded housing) housing development of 902 residential units and subsidiary land uses.

(f) Date of approval:

30 September 2008.

(g) Status of development:

General Plans for first extension approved (Section 37(a) of the DFA) and services agreements in the process of being finalised (Section 40 of the DFA).

2.9.3.3 The Fourth Applicant was granted approval in terms of the DFA, for the development as depicted on the layout plan attached hereto marked Annexure "A9", for the following development:

(a) Name of development:

Waterval Proper and Waterval Extensions 1 to 8.



(b) Property Description:

Remainder of Portion 44 of the Farm Waterval 150 IR
and Remainder of Portion 2 of the Farm Rietspruit 152
IR.

(c) Property location:

Directly south of Alberton and north of the Midvaal
Municipality boundary, within the jurisdiction of the
Ekurhuleni Metropolitan Municipality.

(d) Property extent:

698 hectares.

(e) Description of development:

Predominantly residential development of 9201
residential (subsidised, GAP and bonded) units plus
subsidiary mixed commercial, business, community
and educational land uses.

(f) Date of approval:

Provisionally approved on 2 February 2011.

(g) Status of development:

Final approval pending, Services Agreements being negotiated (Section 40 of the DFA), pegging of first extension for purposes of General Plan (Section 37(a) of the DFA) underway.

2.9.3.4

The Fifth Applicant was granted approval in terms of the DFA, for the development as depicted on the layout plan attached hereto marked Annexure "A10", for the following development:

(a) Name of development:

Polokwane Extensions 116 and 117.

(b) Property Description:

Portion of the Remainder and Portion 2 of the Farm

Morgenzon 690 LS and Portion 1 of the Farm
Vergunning 677 LS, Polokwane.

(c) Property location:

South of Polokwane/Seshego Road abutting onto the
western (developed) portion of the City of Polokwane.

(d) Property extent:

926.1 hectares

(e) Description of development:

9825 residential (subsidised, GAP, bonded/middle
income) units, 50 hectares of business/commercial
uses, educational, institutional (hospital and
correctional facility) and subsidiary land uses.

(f) Date of approval:

7 December 2011.

A large, stylized handwritten signature is located in the bottom right corner of the page. To its right, there are several smaller, illegible handwritten marks or initials.

(g) Status of development:

Implementation of Conditions of Establishment (Section 33 of the DFA), phasing under consideration (Section 35 of the DFA).

- 2.9.4 I was a member of the first drafting team established after the judgment of this Court in the confirmation application, tasked to prepare in respect of the Seventh Respondent new national legislation that will eventually supersede/replace the DFA;
- 2.9.5 I am a member of the team appointed by the Gauteng Provincial Government to prepare the new Gauteng Planning and Development Act, its Regulations and its Guidelines; and
- 2.9.6 I am a member of the team appointed to prepare the new Free State Province Planning and Development Act and its Regulations.
- 2.10 I respectfully submit that I possess an intimate knowledge of the DFA and other legislation governing property development and municipal planning.



2.11 Confirmatory affidavits and co-founding affidavits will be attached at the end hereof by the Applicants' deponents.

3. THE RESPONDENTS

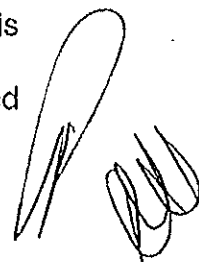
3.1 The First Respondent is **CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY**, a category A metropolitan municipality with a mayoral executive system and with exclusive municipal executive and legislative authority in its area of jurisdiction in terms of the provisions of the Local Government: Municipal Structures Act 117 of 1998 ("the Structures Act") and Section 155(1) of the Constitution of the Republic of South Africa, Act 108 of 1996 ("the Constitution"), with principal offices at Metropolitan Centre, Loveday Street, Braamfontein, Johannesburg c/o Moodie & Robertson of 9th Floor, 209 Smit Street, Braamfontein, Johannesburg, Gauteng Province, the Applicant in the confirmation application.

3.2 The Second Respondent is the **GAUTENG DEVELOPMENT TRIBUNAL ("GDT")**, established for the Province of Gauteng by its Premier as contemplated by Section 15 of the DFA, c/o its Chairperson with offices at the Department of Development, Planning and Local Government, cnr. Commissioner and Sauer

Streets, Johannesburg, c/o the State Attorney, 10th Floor, North State Building, cnr. Market and Kruis Streets, Johannesburg, Gauteng Province, the First Respondent in the confirmation application.

3.3 The Third Respondent is **GAUTENG DEVELOPMENT APPEAL TRIBUNAL** ("GDAT"), a development appeal tribunal established for the Province of Gauteng by its Premier, pursuant to the provisions of Section 24 of the DFA, c/o its Chairperson with offices at the Department of Development, Planning and Local Government, cnr. Commissioner and Sauer Streets, Johannesburg, c/o the State Attorney, 10th Floor, North State Building, cnr. Market and Kruis Streets, Johannesburg, Gauteng Province, the Second Respondent in the confirmation application.

3.4 The Fourth Respondent is **IVORY PALM PROPERTIES 20 CC**, a close corporation duly incorporated in terms of the Close Corporations Act 69 of 1984 ("the Close Corporations Act"), with a registered address at Krui Mediese Sentrum, cnr Ruhamah and Bank Avenues, Helderkrui, c/o Herman van der Merwe & Dunbar c/o Botha & Sutherland of 4th Floor, Marble Towers, cnr. Jeppe and Von Willich Streets, Johannesburg, Gauteng Province, as is evidenced by a close corporation search attached hereto marked



Annexure "A11", the Third Respondent in the confirmation application.

3.5 The Fifth Respondent is **VAN DER WESTHUIZEN, PIETER MARTHINUS**, an adult person residing at 228 Baansyfer Avenue, Ruimsig, of whom the full and further particulars are unknown to the First Applicant c/o Rooth Wessels Maluleke c/o Hooyberg Attorneys of Block B, Library Office Park, 14 Payne Road (off William Nicol Drive), Bryanston, Johannesburg, Gauteng Province, the Fourth Respondent in the confirmation application.

3.6 The Sixth Respondent is **VAN DER WESTHUIZEN, ELFREDA ELIZABETH**, an adult person residing at 228 Baansyfer Avenue, Ruimsig, of whom the full and further particulars are unknown to the First Applicant c/o Rooth Wessels Maluleke c/o Hooyberg Attorneys of Block B, Library Office Park, 14 Payne Road (off William Nicol Drive), Bryanston, Johannesburg, Gauteng Province, the Fifth Respondent in the confirmation application.

3.7 The Seventh Respondent is the **MINISTER OF RURAL DEVELOPMENT AND LAND REFORM [FORMERLY MINISTER OF LAND AFFAIRS]**, cited in his official capacity as the minister responsible for the administration of the DFA and the administration

of its replacement, being the Spatial Planning and Land Use Management Bill ("SPLUMB"), c/o the State Attorney, 10th Floor, North State Building, cnr. Market and Kruis Streets, Johannesburg, Gauteng Province, the Seventh Respondent in the confirmation application.

3.8 The Eighth Respondent is the **MEMBER OF THE EXECUTIVE COUNCIL FOR DEVELOPMENT, PLANNING AND LOCAL GOVERNMENT, GAUTENG PROVINCE** responsible for the performance of certain functions entrusted to him in terms of the DFA and cited herein in his official capacity, c/o the State Attorney, 10th Floor, North State Building, cnr. Market and Kruis Streets, Johannesburg, Gauteng Province, the Seventh Respondent in the confirmation application.


3.9 The Ninth Respondent is the **MEMBER OF THE EXECUTIVE COUNCIL FOR LOCAL GOVERNMENT AND TRADITIONAL AFFAIRS, KWAZULU-NATAL PROVINCE**, c/o the State Attorney, 10th Floor, North State Building, cor. Market and Kruis Streets, Johannesburg, Gauteng Province, the First Intervening Party in the confirmation application.

3.10 The Tenth Respondent is **ETHEKWINI METROPOLITAN**

MUNICIPALITY, a municipality duly established in terms of Notice 6770 of 2000, published in terms of the provisions of Section 12(1) of the Local Government: Municipal Structures Act 117 of 1998 care of its Municipal Manager at City Hall, Dr Pixley KaSeme Street, Durban, KwaZulu-Natal, the Second Intervening Party in the confirmation application.

3.11 The Eleventh Respondent is THE DEPARTMENT OF AGRICULTURE, RURAL DEVELOPMENT AND LAND ADMINISTRATION, MPUMALANGA PROVINCE, the Third Intervening Party in the confirmation application, of 15 Murray Street, Nelspruit, care of the State Attorney, 10th Floor, North State Building, cor. Market and Kruis Streets, Johannesburg, Gauteng Province.

3.12 The Twelfth Respondent is SOUTH AFRICAN PROPERTY OWNERS ASSOCIATION ("SAPOA") (Registration No. 1966/008959/08), an association not for gain, incorporated in terms of the provisions of the Companies Act 61 of 1973 ("the old Companies Act"), with registered offices at Building 2, Hunts End Office Park, 36 Wierda Road West, Wierda Valley, Sandton, as is evidenced by a company search attached hereto as Annexure "A12", the First *Amicus Curiae* in the confirmation application.



3.13 The Thirteenth Respondent is the **MEMBER OF THE EXECUTIVE COUNCIL FOR ECONOMIC DEVELOPMENT, GAUTENG PROVINCE** and to whom the administration of the Town-Planning and Townships Ordinance 15 of 1986 ("the Ordinance") was delegated, care of the State Attorney, SALU Building, 255 Schoeman Street, Pretoria, Gauteng Province.

3.14 The Fourteenth Respondent is the **MEMBER OF THE EXECUTIVE COUNCIL FOR CO-OPERATIVE GOVERNANCE, HUMAN SETTLEMENT AND TRADITIONAL AFFAIRS, LIMPOPO PROVINCE** of Limpopo Provincial Government: Legal Services, Litigation Division, Nowaneng Building, 40 Hans Van Rensburg Street, Polokwane.

3.15 The Fifteenth Respondent is the **MEMBER OF THE EXECUTIVE COUNCIL FOR LOCAL GOVERNMENT AND TRADITIONAL AFFAIRS, EASTERN CAPE PROVINCE** of Tyamzafhe Building, Phalo Avenue, Bisho, care of the State Attorney, 29 Western Road, Central, Port Elizabeth.

3.16 The Sixteenth Respondent is the **MEMBER OF THE EXECUTIVE COUNCIL FOR LOCAL GOVERNMENT AND TRADITIONAL**

A large, stylized handwritten signature or scribble in black ink, located at the bottom right of the page, partially overlapping the text of item 3.16.

AFFAIRS, NORTH-WEST PROVINCE of cor. Albert Luthuli and Gerrit Maritz Streets, Ramosa Riekert Building, Dassierand, Potchefstroom, care of the State Attorney, 44 Shippard Street, Mafikeng.

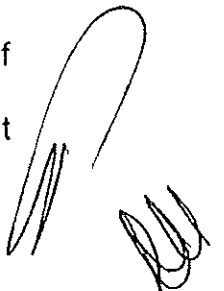
3.17 The Seventeenth Respondent is the MEMBER OF THE EXECUTIVE COUNCIL FOR AGRICULTURE, RURAL DEVELOPMENT AND LAND ADMINISTRATION, MPUMALANGA PROVINCE of 15 Murray Street, Nelspruit, care of the State Attorney, 10th Floor, North State Building, cor. Market and Kruis Streets, Johannesburg, Gauteng Province.

4. PURPOSE OF THIS APPLICATION

4.1 This application has as its purpose:

4.1.1 firstly, that the Applicants be granted direct access to this Honourable Court;

4.1.2 secondly, the securing of an order further extending the period of suspension of a declaration of invalidity of Chapters V and VI of the DFA by 24 months until 16 June 2014 or until the date of enactment of the Spatial Planning and Land Use Management



Bill ("SPLUMB") and its transitional provisions or any similar legislation, whichever occurs first; and

- 4.1.3 thirdly, the Applicants will request the Honourable Court, for the currency of the extended period of suspension of the declaration of invalidity requested, to issue further conditions to which applications for the establishment of land development areas in terms of provisions of Chapters V and VI of the DFA will be subject.

5. THE PERIOD POST THE DECLARATION OF CONSTITUTIONAL INVALIDITY

- 5.1 For the sake of completeness, paragraph 5 of the judgment in the confirmation application is repeated herein *verbatim*:

"Order

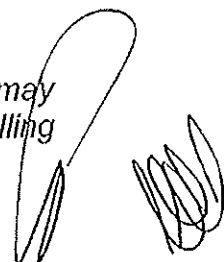
[95] *In the result the following order is made:*

1. *The Member of the Executive Council of KwaZulu-Natal for Local Government and Traditional Affairs; eThekweni Municipality; and the Department of Agricultural, Rural Development and Land Administration, Mpumalanga, are joined as the first, second and third intervening parties.*
2. *Condonation for the late filing of written submissions is granted.*
3. *The application of the City of Johannesburg*



Metropolitan Municipality for leave to appeal in respect of the review application is dismissed.

4. *The appeal by the Gauteng Development Tribunal, Gauteng Development Appeal Tribunal, the Minister of Land Affairs, and the Member of the Executive Council for Development, Planning and Local Government, Gauteng, is also dismissed.*
5. *The order of constitutional invalidity made by the Supreme Court of Appeal in respect of Chs V and VI of the Development Facilitation Act 67 of 1995 is confirmed.*
6. *Paragraph 2 of that order relating to the suspension of the order of invalidity is set aside.*
7. *The declaration of invalidity is suspended for 24 months from the date of this order to enable Parliament to correct the defects or enact new legislation.*
8. *The suspension is subject to the following conditions:*
 - (a) *Development tribunals must consider the applicable integrated-development plans, including spatial-development frameworks and urban-development boundaries, when determining applications for the grant or alteration of land-use rights.*
 - (b) *No development tribunal established under the Act may exclude any bylaw or Act of Parliament from applying to land forming the subject-matter of an application submitted to it.*
 - (c) *No development tribunal established under the Act may accept and determine any application for the grant or alteration of land-use rights within the jurisdiction of the City of Johannesburg Metropolitan Municipality or eThekweni Municipality, after the date of this order.*
 - (d) *The relevant development tribunals may determine applications in respect of land falling*



within the jurisdiction of the City of Johannesburg Municipality or eThekweni Municipality only if these applications were submitted to it before the date of this order.

9. *There is no order as to costs."*

5.2 The *ratio* for the Honourable Court having acceded to the request of, *inter alia*, SACCPP and SAPOA who requested the suspension of the declaration of invalidity, is contained in the following paragraphs of the judgment of this Honourable Court:

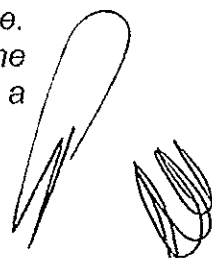
"[75] In the Supreme Court of Appeal the respondents urged the court to suspend the declaration of invalidity. They motivated their request by stating that an order that became effective immediately would seriously undermine the 'legitimate objectives of reconstruction and development' in this country. They also said that many municipalities in the Gauteng province rely on the Tribunal and the Act to determine applications for rezoning and the establishment of townships, because these municipalities do not have the capacity to follow procedures set out in the Ordinance. An order with immediate effect would, they contended, create a vacuum and bring development to a complete halt in some municipalities.

[76] In the light of the additional information placed before this court by the amici and the provincial departments in KwaZulu-Natal and Mpumalanga, the order quoted above must be reconsidered and if necessary must be replaced with an order that takes into account all the circumstances of the case. I must point out that this additional information was not placed before the Supreme Court of Appeal when it considered the matter.

[77] In this court, the amici and the provincial departments

gave evidence to the following effect. The provincial ordinances which regulate land zoning and the establishment of townships have a limited application confined to areas which formed part of the old Transvaal, Natal, Orange Free State and Cape provinces. These areas excluded the so-called 'independent' states of Transkei, Bophuthatswana, Venda and Ciskei. They also excluded the self-governing homelands which were located in Natal, the Transvaal and the Orange Free State. When the provinces were reconfigured under the interim Constitution, the so-called 'independent' states and self-governing homelands became part of the new provinces.

- [78] In terms of the transitional provisions of s 229 of the interim Constitution, these areas were reincorporated together with their different laws regulating land administration. The consequence of this is that, where a municipality's geographical area consists of areas that fell, for example, under the old Transvaal province and a former 'independent' state or self-governing homeland, different pieces of legislation may apply in these municipalities. There can be no doubt that this situation is undesirable. It seems that the Act was designed to address this problem, among other matters. The difficulty, however, is that the Act is inconsistent with the Constitution which came into force subsequent to it.
- [79] The other evidence placed before us is that, in areas where the ordinances apply, most municipalities lack capacity to exercise these powers. This situation is aggravated by the fact that the Constitution decrees wall-to-wall municipalities and, as a result, municipalities are established for the territory of the entire country.
- [80] In view of the matters referred to above, it was argued that, if the order of invalidity takes immediate effect, land development will come to a complete halt in most areas. This undoubtedly will not be in the interest of the administration of land use and good governance. Most significantly, prospective land developers in the affected areas will be prejudiced. This may also have a



negative impact on the economic growth of the country. Both the City and eThekweni Municipality accept that the suspension of the order of invalidity is necessary in this matter. The parties submitted that the invalidity order should be suspended for periods ranging from 18 months to 36 months. I am satisfied that it would be just and equitable to suspend the invalidity order for a period of 24 months, as this will be a reasonable time for Parliament to rectify the defects or to enact new legislation."

5.3 Property developers, the likes of which include the Second to Fifth Applicants, on strength of the suspension of the declaration of invalidity continued submitting new applications for the establishment of land development areas in terms of the provisions of Chapter V and VI of the DFA, as well as to implement steps with regard to approvals granted before and after the date of declaration of constitutional invalidity. The development tribunals and development appeal tribunals established in terms of the provisions of the DFA also continued considering applications and appeals submitted prior to the date of the declaration of invalidity.

5.4 Great uncertainty has recently arisen regarding the effect that the declaration of constitutional invalidity has on applications which were submitted and/or approved by DFA tribunals but which have not been finalised by 17 June 2012.

5.5 The Seventh Respondent's Department is of the view that even if

the period of suspension of the declaration of invalidity is not further extended, all pending applications before development tribunals and development appeal tribunals may still be finalised after 17 June 2012. In this regard, I attach hereto as Annexure "A13" a statement, dated 22 March 2012 ("the statement"), issued by the Seventh Respondent's Department as well as a postscript to the statement, dated 28 March 2012 attached hereto as Annexure "A14" ("the postscript").

5.6 In paragraph 4.1 of the statement (Annexure "A13") the Seventh Respondent's Department expresses the following view:

"4.1 Official position on the DFA regarding applications received in terms of the DFA before the 17 June 2012

(a) the Constitutional Court did not order the repeal of the whole of the DFA but found only chapters V and VI of the Development Facilitation Act as constitutionally invalid;

(b) applications received by Development Tribunal before 17 June 2012 will continue to be heard and determined by the Tribunals even after 17 June 2012 as if the Constitutional Court had not declared invalid Chapters V and VI of the DFA BUT subject to:

(i) no Development Tribunal must exclude any legislation from applying to land forming the subject matter of an application to it; and

- (ii) *Development Tribunals must take into consideration in all applications before them the Spatial Development Frameworks ("SDFs") and plans of the municipality where the land is situated.*
- (c) *Since the appointments of Development Tribunal members were done in terms of Chapter III of the DFA (which remains unaffected by the Concord order) tribunal members may continue to hold office beyond the 17 June 2012 until the DFA is repealed.*
- (d) *The appointment of other public functionaries performing any function (such as Designated Officers) including the consideration and disposal of all applications received before 17 June 2012 is unaffected by the Concord order and may continue to hold office beyond the 17 June 2012 until current applications before the Development Tribunal are disposed of and the DFA is repealed.*
- (e) *No new applications may be received by any Development Tribunal in terms of the DFA on a date beyond 17 June 2012.*

4.2 *Official position on all land development applications with effect from 18 June 2012*

- (a) *...*
- (b) *Application to the Constitutional Court by the Government for an extension of the 24 months will be made in time if it is established that no other viable alternative exists to processing land applications in any part of the country except via the DFA.*
- (c) *Since the appointments of Development Tribunal Members were done in terms of Chapter III of the DFA (which remains unaffected by the Concord order) tribunal members may continue to hold office beyond the 17 June 2012 until the DFA is repealed.*

- (d) *The appointment of other public functionaries performing any function (such as Designated Officers) including the consideration and disposal of all applications received before 17 June 2012 is unaffected by the Concord Order and may continue to hold office beyond the 17 June 2012 until current applications before the Development Tribunals are disposed of and the DFA is repealed.*
- (e) *No new application may be received by any Development Tribunal in terms of the DFA on a date beyond 17 June 2012."*

5.7 In the postscript (Annexure "A14") the Seventh Respondent's Department relies on the provisions of Section 12(2)(c) of the Interpretation Act 33 of 1957 ("the Interpretation Act") to support its view that DFA tribunals will, despite the declaration of invalidity, be permitted to continue with the activities in terms of Chapters V and VI of the DFA after 17 June 2012. The relevant part of Section 12(2)(c) of the Interpretation Act relied upon is as follows:

"Where a law repeals any other law, then unless the contrary intention appears, the repeal shall not –

- (a) ...; or
- (b) ...; or
- (c) *affect any right, privilege, obligation or liability acquired, accrued or incurred under any law so repealed; or*
- (d) ...; or
- (e) *affect any investigation, legal proceeding or remedy in*

respect of any such right, privilege, obligation, liability, forfeiture or punishment as is in this subsection mentioned,

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the repealing law had not been passed."

5.8 The Applicants have been advised that the view expressed by the Seventh Respondent's Department pertaining to the continuation of the functions of tribunals established in terms of the DFA for land development applications brought in terms of Chapters V and VI of the DFA is wrong in law. The Applicants herein have been advised that DFA tribunals, their members and office bearers will, from 18 June 2012, not be able to lawfully exercise any functions contained in Chapters V and VI of the DFA or the DFA Regulations with regard to any applications for the establishment of land developments not finalised by the said date. Legal argument will be advanced in this Honourable Court at the hearing of this matter in this regard. In a nutshell, it will be contended that Section 12(2)(c) of the Interpretation Act 33 of 1957 ("the Interpretation Act") do not apply to orders of constitutional invalidity.

5.9 It is indeed correct that the sections dealing with the establishment of tribunals will not become invalid, but the tribunals and other


functionaries, although still in existence, will be stripped of their legal capacity and statutory powers to:

5.9.1.1 consider pending DFA applications; and

5.9.1.2 process and implement approved applications.

5.10 Suffice to say that at this point massive confusion exists in the development industry as a result of the views expressed in the statement and the postscript. The Seventh Respondent's Department has also posted the statement on its official website, as appears from a printout attached hereto as Annexure "A15", which seems to imply that the Seventh Respondent's Department view has been elevated to that of official policy.

5.11 The Seventh Respondent's Department could not be convinced to timeously bring an application for the further extension of the period of suspension of the declaration of invalidity, and hence this application. The Applicants, for reasons of their interest in the developments discussed above and their interest in the relief herein sought, cannot risk a situation to arise that an application similar to this one is not brought timeously.



5.12 Subsequent to the handing down of the judgment by the Honourable Court in the confirmation application, the following most significant events occurred:

5.12.1 A drafting team, of which I was a member, was appointed by the Presidency and the National Planning Commission to prepare a new Bill, today referred to as the Spatial Planning and Land Use Management Bill ("*SPLUMB*" or "the Bill").

5.12.2 The intention was that this Bill would have, upon its enactment:

5.12.2.1 repealed the DFA and a host of other Acts dealing with land development procedures;

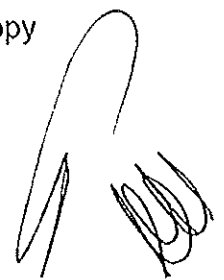
5.12.2.2 introduced a uniform planning and land use system for the entire country;

5.12.2.3 prescribed stringent time limits for the consideration and disposal of land development applications; and

5.12.2.4 contained transitional provisions ensuring that all pending DFA applications and DFA approvals be finalised.

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- 5.12.3 The first version of the Bill was completed and delivered to the National Planning Commission during August/September 2010;
- 5.12.4 The Bill was adapted and amended internally and resulted in the publication during May 2011 of a substantially amended version for comment in the Government Gazette. A copy of the relevant Government Gazette Notice is attached hereto as Annexure "A16";
- 5.12.5 Substantial comments on the Bill were prepared and submitted by numerous role players. I also prepared comments on the Bill;
- 5.12.6 After the closing date for comments (during June 2011) a further substantial impasse presented itself;
- 5.12.7 The delays which occurred created substantial uncertainty and apprehension. I was requested by a number of my clients who operate in the land development industry (*inter alia* 2nd to 5th Applicants hereto), to prepare a letter for circulation within the industry, alerting role players to the devastating consequences that may arise should Chapters V and VI of the DFA become invalid without SPLUMB being enacted. I attach hereto a copy of my letter of 9 November 2011, as Annexure "A17".



5.13 As the Honourable Court will note from the attached letter, the devastating consequences that the invalidity of the said Chapters V and VI of the DFA will bring about will not be limited only to the fact that in many areas of our country no alternative legislation for land development will be available but will also pertain, specifically, to the processing and execution of many valid DFA approvals. In this regard, I wish to invite the attention of the Honourable Court to what is stated below.

5.14 In addition to those developments in which the 2nd to 5th Applicants are involved in, listed as examples above, I hereby list the following further examples of developments of which I have been involved in to further illustrate the negative consequences referred to in the proceeding paragraphs:

5.14.1 Irene Extension 92, the particulars of which are:

(a) Name of developer:

M&T Development.

(b) Property Description:

Remainder of Portion 335 Doornkloof 391 JR and
Portion 198 of Doornkloof 391 JR.

(c) Property location:

South eastern quadrant of the N1/Botha Avenue
Interchange – City of Tshwane Metropolitan
Municipality.

(d) Property extent:

237.9713 hectares.

(e) Description of development:

Mixed land use development with a total bulk of
777 044m², consisting of high density residential,
offices, retail and related commercial and community
orientated land uses.

(f) Date of approval:



30 January 2012.

(g) Status of development:

Phasing (division) (Section 35 of the DFA) underway, pegging for purposes of General Plan (Section 37 of the DFA) and negotiation of Services Agreements currently attended to.

5.14.2 Valkhoogte Extension 13, the particulars of which are:

(a) Name of developer:


Benoni Precinct Partnership.

(b) Property Description:

Portions 470 and 471 of the Farm Vlakfontein 30 IR.

(c) Property location:

To the north of Benoni Central Business District at



Intersection of Glen Gory and Elm Roads.

(d) Property extent:

Approximately 28 hectares.

(e) Description of development:

New Regional Retail Node for Benoni, consisting of a bulk of approximately 120 000m².

(f) Date of approval:

17 January 2012.

(g) Status of development:

Services Agreement being negotiated (Section 40 of the DFA), pegging and preparation of General Plan (Section 37(a) of the DFA) underway; and

5.14.3 Dalpark Extensions 19 to 23, Larrendale Extensions 4, 5 and



Apex Extensions 8 and 9, the particulars of which are:

(a) Name of developer:

Lindriet Beleggings and others.

(b) Property Description:

Various portions of the Farm Rietfontein IR.

(c) Property location:

To the east of R23, opposite Mall@Carnival Regional Retail Shopping Centre and Carnival Casino, Greater Brakpan Area.

(d) Property extent:

295.29 hectares.

(e) Description of development:



Mixed land use development with a total bulk of approximately 690 000m², consisting of single residential, high density residential, variety of business and commercial uses, open areas, educational and subsidiary land uses.

(f) Date of approval:

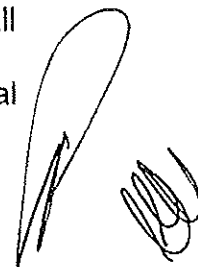
11 October 2011.

(g) Status of development:

Appeal noted, but dismissed on 27 February 2012, Services Agreements currently being negotiated in terms of Section 40 of the DFA.

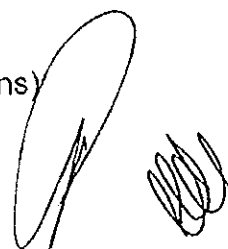
5.15 The abovementioned land development areas as well as those listed in paragraph 2.9, will all be developed on a phased basis over, in some instances, a development horizon of up to 20 years is predicted.

5.16 For all phased developments approved by DFA tribunals, such as all of the developments referred to above, a number of essential



functions will still have to be performed in future to give effect to such approvals. Such functions include:

- 5.16.1 The publication of notices by the Designated Officer to give effect to the suspension of title conditions, contemplated in Section 33(4) and Section 34 of the DFA;
- 5.16.2 The publication of notices to give effect to the amendment of town planning schemes, contemplated in Sections 33(2)(i) and 33(4) of the DFA;
- 5.16.3 Division and amendment of approved land development areas, as contemplated in Section 35 of the DFA;
- 5.16.4 Approval of General Plans by the Surveyor General of the different phases (extensions) comprising land development areas, if and when activated, in terms of Section 37(a) of the DFA;
- 5.16.5 Opening of township registers by the Register of Deeds as contemplated in Section 37(b) of the DFA;
- 5.16.6 Issuing of certificates in respect of different phases (extensions)



of land development areas by designated officers to give even in new developments the status of being "registrable", as contemplated in Section 38 of the DFA;

5.16.7 Entering into of services agreements and approval of the said services agreements, as contemplated in Section 40 of the DFA;

5.16.8 Installation of engineering services pursuant to services agreements concluded between municipalities and developers;

5.16.9 Approval of contractors and the construction of buildings; and

5.16.10 Sale and transfer of immovable property only once the designated officer appointed in terms of the DFA has certified to the relevant Registrar of Deeds, *inter alia*, the conditions of establishment imposed by a development tribunal have been complied with and that engineering services have been installed, as contemplated in Section 38 of the DFA.



5.17 It is a common feature of housing and mixed-use developments to phase such developments over a number of years. Some of the developments referred to above have an implementation timeframe extending over approximately 20 years in future. What developers



typically do when making application for housing and mixed-use developments, is to secure the rights, and then to phase the servicing of land development areas on an incremental basis depending on market take-up and numerous related factors. It would be commercial suicide for a developer to install all bulk infrastructure services such as reservoirs, roads, sanitation and the like in anticipation of a consumer market which will only manifest itself over a period of 20 years as the holding costs, which will include the cost of service infrastructure, will be exorbitant.

5.18 Should functionaries of the DFA not be able to continue these functions, which are contained in the impugned Chapters V and VI of the DFA, such developments will turn into very expensive white elephants, as it will remain incomplete. Engineering services will remain uninstalled, building plans will not be approved, occupation of completed structures will not be possible and sale and transfer to end users will not be possible.

5.19 A developer who has completed the installation of all engineering services and who after 18 June 2012 requests a Section 38 certificate or endorsement will find that the designated officer does not have the authority to issue same, without which the transfer of immovable properties cannot take place in the relevant Deeds

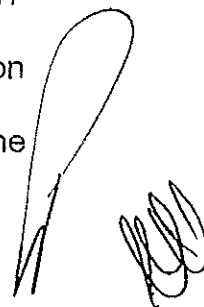


Registry. This will result in purchasers cancelling deeds of sale for failure by developers to effect transfer. Such litigation will lead to the financial demise of a number of developers.

5.20 SPLUMB, in its amended form may contain transitional arrangements dealing with so-called "*unfinished DFA business*", contemplated in the preceding paragraph. However, as will be noted from the paragraphs following hereunder, it now seems clear that SPLUMB, and the Regulations thereto, will not be enacted timeously. If SPLUMB is not enacted before 18 June 2012, which no doubt it will not, the transitional provisions dealing with pending DFA applications will be of no assistance. Hence the prayer for the addition of measures and conditions providing for this uncertainty.

5.21 For these reasons, the powers and functions to be performed in terms of Chapters V and VI of the DFA will have to remain alive.

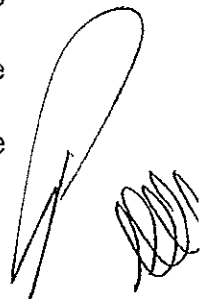
5.22 In the interim, the Seventh Respondent's Department maintained that SPLUMB will, in all probability, be enacted before the deadline of 18 June 2012. A workshop was presented to SAPOA on 17 January 2012 and at the said workshop, a power point presentation was attended to by Mr Sunday Ogunronbi ("Mr Ogunronbi"), the



Executive Manager: Spatial Planning and Information of the Department Rural Development and Land Reform (the Seventh Respondent's Department). A similar slide show was presented to the Free State Provincial Government on 15 March 2012. I attach hereto, as Annexure "A18" and Annexure "A19" respectively, the timelines for completion of the said Bill as encapsulated in the respective PowerPoint presentations. The difference between the two sets of timelines as presented on 17 January 2012 and 15 March 2012 respectively, is significant and illustrates the reasons why an overwhelming perception prevails that the said deadline will not be met and that a "vacuum" will indeed exist after the deadline imposed by this Honourable Court, is reached, should same not be extended.

5.23 After the PowerPoint presentation by Mr Ogunronbi on 17 January 2012, the Seventh Respondent's Department published the statement (Annexure "A13") and postscript (Annexure "A14") and posted same on its official website as official policy (Annexure "15").

5.24 Although the possibility of re-approaching the above Honourable Court for an extension of the said deadline is mentioned in the press release, the Applicants are of the respectful view that it will be irresponsible to wait until the last moment and to then approach the

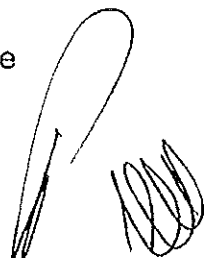


Honourable Court with the application for extension.

5.25 On 21 February 2012, an updated and substantially amended version of SPLUMB was released. I attach hereto, as Annexure "A20" copies of the proposed Section 59 thereof which deals with the transitional arrangements as far as uncompleted DFA applications are concerned. Although I hold the view that the said sections require further refinement and amendment, I attach same merely to indicate to the above Honourable Court what measures are proposed for implementation and to illustrate why SPLUMB is required to finalise DFA applications which have already been submitted, but remain uncompleted. I respectfully submit that it also indicates the conditions which should prevail during the currency of any possible further period of suspension.

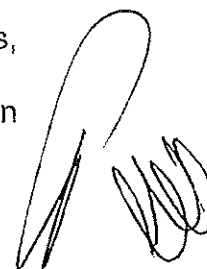
5.26 Although the Seventh Respondent's Department attempts to introduce certainty into the market, which is to be commended, such certainty can only be based on the correct interpretation of the legal position. The said certainty can only be achieved by the granting of the relief sought from the Honourable Court in this application.

5.27 The Applicants have requested Mr Hein du Toit ("Mr Du Toit") of Demacon Market Studies (Pty) Ltd to prepare a brief report to the



above Honourable Court, from an economic point of view, to illustrate the economic impacts that will be brought about should the order of invalidity of Chapters V and VI of the DFA become effective without SPLUMB having been enacted and the so-called "vacuum" as referred to in the press statement (Annexure "A13"), presents itself. A copy of the said study and a confirmatory affidavit, deposed to by the said Mr Du Toit are attached hereto as Annexure "A21" and Annexure "A22" respectively. The most significant findings in this study reveal that:

- 5.27.1 With regard to DFA applications submitted between 1998 and 2009 throughout the Republic, such applications were in respect of a wide variety of land uses, namely: commercial – 17%; industrial – 1%; mixed use – 10%; other – 5%, uncategorised residential – 18%; high income residential – 13%; low income residential – 8%; all residential – 39%; tourism – 5% and uncategorised – 23%. It would be safe to assume that in a large number of these applications submitted in terms of the DFA between 1998 – 2009, which total 1215 in number, a great number would constitute phased developments which have become partly established and which will require the continued existence of the functions of tribunals, appeal tribunals, members, office bearers and functionaries until final completion



of all phases of such developments;

5.27.2 In the Mpumalanga Province, 13 new DFA applications have not been finalised, representing a total estimated investment value of R5,6 billion, which, if finalised, will have a direct impact of R8,2 billion in additional business sales and R2,5 billion in additional Gross Geographic Product ("GGP"), also creating 8400 job opportunities. These pending applications will also contribute an estimated R251,9 million to the municipal coffers in the form of rates and taxes;

5.27.3 In the Limpopo Province, 15 DFA applications have not been finalised, amounting to a total estimated investment value of R2,8 billion. An additional 16 DFA applications are unaccounted for in this Province with an estimated investment amount of R13,4 billion. In respect of the 15 pending applications and 16 unaccounted applications, the economic impact seems to suggest that R23,6 billion will be generated in additional business sales, R7,4 billion in additional GGP and 53 200 job opportunities. In respect of those pending and unaccounted applications, the municipal coffers will be favoured with receiving in excess of R104 million per annum in rates and taxes;

5.27.4 Land development, regardless of whether it is formally established by utilising the DFA, various provincial ordinances or other sets of legislation, contribute no less than 8,3% to the Gross Domestic Product ("GDP") of the economy of the Republic. It also provides employment to 4% of the employment opportunities in the Republic. Land development therefore constitute a major contributor to the South African economy; and

5.27.5 Should the period of suspension not be further extended, it will no doubt have a profound effect on the general economy and our growth rate.

5.28 Currently, the DFA is the only legislation that provides an alternative to overcome the hurdles alluded to above and it is for this reason that the Applicants to this application seek relief.

5.29 I respectfully submit that the Ordinances that find application in the Limpopo, Mpumalanga and North West Provinces (the Provinces that constituted the erstwhile Transvaal Province) dealing with land use and municipal planning, will not fill the vacuum created by the declaration of invalidity. In motivation for this Court's decision referred to in paragraphs [75] – [80] of the judgment (Annexure

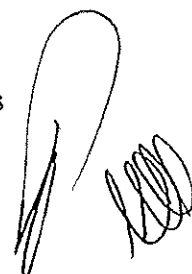


"A1") remain applicable as reason why this period of suspension should be further extended.

5.30 Further to the above, an attack on the constitutionality of Section 139 of the Transvaal Township and Town-Planning Ordinance, has recently been launched in the Northern Gauteng Division of the High Court under case number 71551/2011. In this matter, the High Court is requested to pronounce on the constitutionality of Section 139 that empowers a township board to hear appeals against, in that instance, approval or refusal of consent use applications by municipalities. The attack appears to be based on the judgment of this Honourable Court in the confirmation application where it was found that the taking of a decision on appeal to a provincial body (such as a DFA tribunal or townships board) infringes upon a municipality's executive constitutional competencies pertaining to "*municipal planning*". A copy of the notice of motion in that application is attached hereto as Annexure "A23". Should that application succeed, it will have a profound effect on the ability to dispose of applications submitted in terms of the Ordinance.

6. CONDITIONS SUGGESTED DURING THE OPERATION OF THE POSSIBLE EXTENDED PERIOD OF SUSPENSION

6.1 In order to avoid uncertainty in the market place and hearings



before DFA development tribunals and development appeal tribunals from being disrupted by legal arguments being formulated to the extent that during the extended period of suspension these tribunals will not be entitled to entertain land development applications, the Honourable Court will respectfully be requested to grant the following additional relief, namely:

- 6.1.1 that the 24-month period referred to in paragraph 95.7 of the confirmation application be further extended until 16 June 2014;
- 6.1.2 that the conditions contained in paragraphs 95.8(a) – (d) of the confirmation application apply to the further period of suspension granted in terms of this order; and
- 6.1.3 subject to 6.1.1 and 6.1.2 above, tribunals established in terms of the DFA, its members and office bearers appointed in terms thereof and all other functionaries referred to in Chapters V and VI of the DFA and Regulations made in terms of the DFA (“the DFA Regulations”) will retain and exercise all powers and functions provided for in Chapters V and VI of the DFA and the DFA Regulations until such time as all applications for the establishment of land development areas in terms of Chapters V and VI of the DFA have been finalised and implemented and all

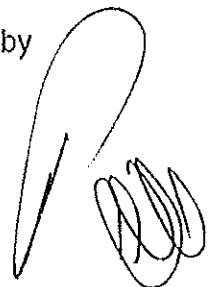
administrative aspects incidental to such applications have been finalised, including appeals to appeal tribunals established terms of the DFA.

7. APPLICATION FOR DIRECT ACCESS

- 7.1 I repeat that the First Applicant herein was duly admitted by this Honourable Court as the Second *Amicus Curiae* in the confirmation application.
- 7.2 The Second to Fifth Applicants, however, were not parties to the confirmation application.
- 7.3 The Applicants herein respectfully request the Honourable Court to grant leave to them for direct access to this Honourable Court.
- 7.4 The Applicants submit that it is in the interest of justice that an order for direct access be granted for the following reasons:
- 7.4.1 This application seeks a variation of the order granted by this Honourable Court. I accordingly submit that only this Honourable Court can therefore entertain this application;



- 7.4.2 The Government does not seem to be of the serious intention to bring this application prior to the declaration of invalidity taking effect on 18 June 2012;
- 7.4.3 The Applicants seem to be the only parties realising the dire consequences which would follow for developers and developments that are in the process of being finalised prior to the declaration of invalidity of Chapters V and VI of the DFA taking effect; and
- 7.4.4 The Applicants will be left destitute should the period of suspension not be extended, for then the Applicants will have to trust that the transitional provisions of SPLUMB, once enacted, will contain such provisions as would entitle the Applicants to finalise their developments. If these transitional provisions are not enacted, the Applicants' developments will turn into white elephants and the Applicants will find it extremely difficult, if at all, to recover their capital expended on these developments.
- 7.5 I respectfully submit that both the application for direct access and for the extension of the period of suspension can be dealt with by this Honourable Court without the hearing of oral evidence.



- 7.6 I respectfully submit that no dispute of fact will arise in this matter, since this matter mainly concerns legal argument regarding the effect of the current declaration of invalidity and the further suspension thereof. It therefore concerns the application of existing principles concerning such issues.
- 7.7 The Applicants also respectfully request the Honourable Court to abridge the time provided for the lodging of notices of intention to oppose, as is provided for in Rule 18(3) of the Rules of this Honourable Court, so as to be provided within the period stated in the notice of motion.
- 7.8 The Applicants are hopeful that their application for direct access will not be opposed and that it could be dealt with summarily in terms of the provisions of Rule 18(5) of the Rules of this Honourable Court. Should any of the Respondents, however, wish to oppose same, they will be requested to file their opposing affidavits within the time period provided for in the notice of motion and will the Honourable Chief Justice be requested to condone non-compliance with the provisions of Rule 18(4) of the Rules of this Honourable Court.

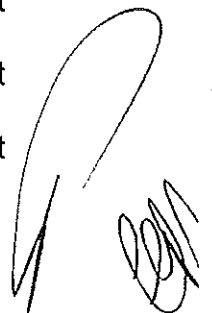


8. URGENCY

- 8.1 It was at all times hoped and trusted that the Seventh Respondent's Department would, within the period of 24 months provided by this Honourable Court for the enactment of legislation addressing the constitutional inadequacies of the DFA, enact such legislation before the period of suspension of the declaration of invalidity would expire. This would have obviated the need for this application.
- 8.2 The enactment of new legislation, however, is a complicated and somewhat time-consuming process which has to follow the process stipulated in the Constitution.
- 8.3 The Seventh Respondent's Department was also hopeful that SPLUMB would be enacted prior to the expiration of the period of suspension. This much is clear from PowerPoint presentation (Annexure "A19") in which hope was expressed that:
- 8.3.1 engagement with Parliament through special committees, including Committees on Co-operative Governance, Human Settlement, Rural Development and Land Reform, would have been finalised by February/March 2012;



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- 8.3.2 possible joint consideration by the National Council of Provinces and the National Assembly would occur shortly thereafter;
- 8.3.3 drafting of regulations would have been produced for purposes of inviting comment could be finalised by March 2012;
- 8.3.4 the holding of parliamentary hearings, including hearings of the Provincial Legislature, could have been completed by March/April 2012;
- 8.3.5 during May 2012, presidential assent could have been achieved; and
- 8.3.6 the enactment of SPLUMB could have been achieved by June 2012.
- 8.4 On Friday, 13 April 2012, I attended a meeting with Mr Ogunronbi during which meeting I, for the first time, realised that SPLUMB will not be enacted before the current period of suspension expires. During this meeting, Mr Ogunronbi reiterated that the Seventh Respondent's Department can also provide no assurance that SPLUMB will be enacted timeously. His statement is consistent with the following remarks contained in paragraph 4 of the postscript



(Annexure "A14"), reading:

"[4] The Department wishes to reiterate that all efforts are on-going to ensure that the Spatial Planning and Land Use Management is passed into law during June 2012. The Executive arm has no control over the operations of the Parliament. As such, the final position on when the Bill is passed is beyond the national government. There is no express or implied acceptance that the Bill will not be passed by June 2012."

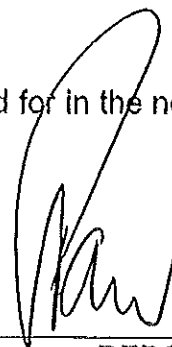
8.5 I have also learned that the second term of this Honourable Court ends on the last day of May 2012. This means that this application, if entertained by this Honourable Court, will unfortunately have to be adjudicated upon on an urgent basis prior to the ending of this Honourable Court's second term (unless this Honourable Court sits out of term). It is for this reason that the Applicants seek an order directing that this application be enrolled by no later than 15 June 2012. Although the suspension of the present order expires on 17 June 2012, I point out that 17 June 2012 falls on a Sunday.

8.6 The Applicants can unfortunately not await the lapsing of the period of suspension, namely 17 June 2012. Once the declaration of invalidity of Chapters V and VI of the DFA take effect, this Honourable Court, I submit will not be able to extend the period of suspension or reintroduce Chapters V and VI of the DFA.

8.7 The Honourable Chief Justice is respectfully requested to dispense with the forms and service provided for in the Rules of this Honourable Court and to give directions for the matter to be dealt with at such time and in such manner and in accordance with such procedure, as may be appropriate before 15 June 2012.

9. RELIEF SOUGHT

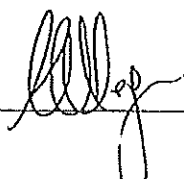
9.1 The Applicants respectfully seek the relief prayed for in the notice of motion to which this affidavit is attached.



DEPONENT

Signed and sworn before me at Pretoria this 23 day of April 2012 after the Deponent declared that he is familiar with the contents of this statement and regards the prescribed oath as binding on his conscience and has no objection against taking the said prescribed oath. There has been compliance with the requirements of the Regulations contained in Government Gazette R1258, dated 21 July 1972 (as amended).

COMMISSIONER OF OATHS:



MARIKE MEYER
KOMMISSARIS VAN EDE
RODERICKSWEG 433
LYNNWOOD . PRETORIA
EX OFFICIO PRAKTISERENDE PROKUREUR
REPUBLIEK VAN SUID-AFRIKA

FULL NAMES:

CAPACITY:

ADDRESS: