
20 October 2017

Attention: Mr Achmat Ebrahim

Attention: Mayor Patrica De Lille

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RE: PUBLIC PARTICIPATION PROCESS REGARDING THE DROUGHT LEVY FOR THE CITY OF CAPE TOWN

1. We refer to the above.
2. The Organisation Undoing Tax Abuse (“OUTA”) is a proudly South African non-profit civil action organisation, comprising of and supported by people who are passionate about improving the prosperity of our nation. OUTA was established to challenge the abuse of authority with regards to taxpayers’ money in South Africa.
3. On 5 December 2017, the City of Cape Town proposed a drought levy that will see the residents of Cape Town pay an additional levy for water according to the value of their properties.
4. The Mayor, Patricia de Lille, said: “...the levy, which will kick off in February next year and remain in place until 2021, will assist the City fund new water projects.”
5. OUTA would like to raise the following concerns regarding the proposed drought levy:
 - 5.1 According to this statement by the Mayor, the decision regarding this levy was made before public participation has commenced. It threatens the rights of the residents to

participate in the decision-making of local government on matters that may have a significant impact on them;

5.2 Furthermore, this proposed public participation process by the City of Cape Town over the period of 5 December 2017 – 12 January 2018 demands the input from the residents during the December holidays (15 December to 15 January) when many residents, the courts, businesses and Parliament are on leave. OUTA recently submitted a petition to Parliament to waive public participation processes over the period of the December holidays (15 December to 15 January).

5.3 The levy is based on the value of houses or property instead of consumption. This does not seem to be a reasonable approach as some properties carry a high value but may be conserving water whilst other properties of lower value may be consuming excessively. We believe those who use more water should pay more for that use.

5.4 The statements by the Mayor indicates that the funds will help pay for the “essential, yet expensive, projects to make new water available to help us get through the drought, such as increasing output from the Atlantis aquifer, accessing water from the Oranjezicht Main Springs and constructing desalination plants.” We believe that there has been a lack of action by the Department of Water and Sanitation (DWS) which raises the question: why did the City of Cape Town not take action by demanding water from the custodian of water or forcing Treasury to supply disaster/emergency funding. OUTA cannot accept the fact, that the residents/ taxpayers are burdened with the consequences of maladministration and the lack of political will.

6. OUTA has the following requests:

6.1 The City of Cape Town relaunches the public participation process regarding the drought levy from 15 January to 15 February (a minimum of 30 days). Thereafter, considers all inputs and responded to it before any final decision is tabled;

- 6.2 That the City of Cape Town adopts the policy that no public participation process will be conducted between the 15th December to the 15th January and amend the City's policies accordingly.
- 6.3 That the City of Cape Town scraps the proposed drought levy completely;
- 6.4 That the City of Cape Town takes action against the custodian of water and forces the DWS to provide water to the City; and
- 6.5 That the City applies for Disaster/Emergency funding from Treasury.
7. The application of this gazette will affect many citizens in the City of Cape Town, yet the public participation process occurred whilst many people will be on holiday.
8. It is important to remember that a proper public participation process is enshrined in Constitution itself. A precedent for such a proper public participation provision exists in the Public Participation Guideline for the National Environmental Management Act 107 of 1998, which includes a provision prohibiting public participation between the 15th of December and the 2nd of January.
9. A useful reference to fair public participation may be found in the Promotion of Administrative Justice Act 3 of 2000 ("PAJA"). In terms of section 3 of PAJA:
- "(1) Administrative action which materially and adversely affects the rights or legitimate expectations of any person must be procedurally fair.*
- (2)(a) A fair administrative procedure depends on the circumstances of each case.*
10. If one were to apply the principles of this section to the matter at hand, it is clear that a public participation period that occurs over the December – January holiday period cannot be considered procedurally fair.

11. OUTA emphasises the fact that when public participation is called for over the December – January holiday period, the rights of both the public and business to participate in the legislative process is prejudiced.
12. OUTA is not against levies that will help the City recoup a percentage of its income lost due to the drought and the necessary water restrictions. However, we don't believe that additional taxes on residents should be implemented. We also have little faith that those increased levies or taxes will be waived after the drought.
13. OUTA hereby requests comprehensive feedback from the City of Cape Town by no later than 29 December 2017.

Kind Regards,

Julius Kleynhans

Portfolio Director: Water and Environmental Affairs

On behalf of the Supporters of OUTA