



Craig McKune <craigm@amabhungane.org>

amaBhungane: Further questions re your private and public sector interests

Craig McKune <craigm@amabhungane.org>
To: Craig McKune <craigm@amabhungane.org>

Sat, Jul 16, 2016 at 6:49 PM

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----- Forwarded message -----

From: **Gary Fisher** <Gary.Fisher@westerncape.gov.za>
Date: Fri, Jul 15, 2016 at 10:23 AM
Subject: Re: amaBhungane: Further questions re your private and public sector interests
To: Craig McKune <craigm@amabhungane.org>

Hi Craig,

No, that assumption is not correct, as far as I recall when the Equinox property was first offered to the company, I was no longer an employee in the Department of Transport and Public Works.

Sincerely,

Gary Fisher

On 15 Jul 2016, at 8:43 AM, Craig McKune <craigm@amabhungane.org> wrote:

Am I safe in concluding then that the vendor presented the opportunity to buy Equinox while you were still at the department?

On Thursday, 14 July 2016, Gary Fisher <Gary.Fisher@westerncape.gov.za> wrote:

Hi Craig,

Thanks. I was formally registered as a director of the company in Oct 2013 but the board's in- principle investment decision was taken some months prior when I was yet fully operationally involved in the company. I was not involved in the decision to purchase the Regent or any aspect of the transaction.

When the opportunity to purchase the Equinox arose, as presented to us by the vendor from whom the company had bought the Regent, I recused myself from the investment decision.

Sincerely,

Gary Fisher

On 14 Jul 2016, at 12:02 PM, Craig McKune <craigm@amabhungane.org> wrote:

Hi Gary,

The article is set for publication in City Press on Sunday. It is complete and has been submitted. I'm now travelling but there is time and opportunity to make edits if needed.

In particular your assertion that you had nothing to do with the Regent transaction clashes with your statement that the CapitalGro boards decided on both purchases, as you were a director on both boards at the time.

On Thursday, 14 July 2016, Gary Fisher <Gary.Fisher@westerncape.gov.za> wrote:

Hi Craig,

In light of your further questions, can you let me know whether you are intent on proceeding with publication of your article tomorrow, before any further response from me; or has your article already been finalised?

Sincerely,

Gary.

On 13 Jul 2016, at 3:28 PM, Craig McKune <craigm@amabhungane.org> wrote:

Dear Gary,

Thank you for this, it is very helpful.

By way of follow up:

1. You say the CapitalGro boards made the decisions to purchase the Regent and Equinox. You were on both boards. Did you recuse yourself, or how did you handle this, particularly in the case of the Regent, which was purchased while you headed public works?

2. Regarding the correspondence you cannot recall:

In March 2012 you wrote to Communicare to say:

I believe you should focus your attention on the Woodstock site for the time being. The Tafelberg site exhibits mixed use potential, which will no doubt include an element of housing. For this reason and the fact that the area is under intense scrutiny by the local ratepayers and other stakeholders, it is going to be a more drawn out process. Your quick win is Woodstock.

And later that year:

We certainly believe for instance that housing should be the primary driver in developing the Woodstock site. This however may not be the case with respect to the Sea Point sites, which doesn't rule out an element of housing, but a cost/benefit analysis must be completed bearing in mind the objective of regeneration in realising the highest and best use for certain strategic provincial properties in order to create reserve revenue/capital for desperately needed social infrastructure in the province. I think you guys should concentrate your energy on sites that can really make a dent in the housing backlog such as Ottery, Stikland, etc.

Kind regards,

Craig

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On Wed, Jul 13, 2016 at 1:39 PM, Gary Fisher <Gary.Fisher@westerncape.gov.za> wrote:

Dear Craig,

Herewith my response. Many apologies for the delay.

Sincerely,

Gary

Gary Fisher

Dear Gary,

Our intended article would inform readers of your seriously conflicted role in that while (and shortly after) you headed public works, oversaw its urban regeneration programme and made key decisions in respect of the Tafelberg site, your company CapitalGro was buying up high-end properties in Sea Point. Your CapitalGro, therefore, stood to benefit from your actions as head of public works.

You are incorrect that I was the head of the provincial department of public works at any stage, my official role was that of Deputy Director- General and I reported to the Head of Department at the time. I had no involvement in the decision to include the erven (including the site known as the Tafelberg School) as part of the portfolio of provincial properties included in the Province's Regeneration Programme. The implementation strategy for this was contained in the Central City Regeneration programme which was approved by the Provincial Cabinet on the 1st of September 2010, prior to my joining Public Works in 2011.

The Programme manager was tasked with, inter alia, implementing the approved strategy by the scoping of various strategic provincial sites in order to:

Unlock Cape Town's potential;

Leverage private sector investment, capacity and expertise;

Generate an income stream to supplement existing infrastructure and property development funding; and
Refurbish and achieve efficiency gains in the operation and maintenance of its provincial properties.

The Regeneration Programme was run by Mr Francois Joubert, along with external consultants.

This is particularly relevant in a context in which, from 2011 to 2014, activists, social housing organisations and city and provincial officials argued strongly in favour of using the site for a mix of much needed inner-city social housing.

See my comments below.

In 2011, under your leadership the department advertised a process in respect of Tafelberg. According to a recent affidavit by NASHO's Malcolm McCarthy: "Through NASHO and the SHIs in Cape Town, it was pointed out to DTPW that the conditions in the calls for expressions of interest would not make it possible to achieve the residential integration defined as one of the objectives of the urban regeneration strategy." This indicates that at that stage, the department had a potential bias against social housing.

I am unsure of what you mean by an "advertised process" in relation to the Tafelberg site in 2011. I also have not had sight of the affidavit of Mr McCarthy to which you refer, however my recollection of the facts is that Mr Joubert had by mid-2011 already been in regular meetings with representatives of the City, NGO's, Communicare and other interested parties to discuss the Programme and its implementation at inter alia the Tafelberg site.

Prior to March 2014, to my knowledge there had been no formal call for expressions of interest by the department as you have averred, nor was there a formal "process" of any sort up to that date. What Mr Joubert was doing, was engaging with various stakeholders as part of the internal scoping process required under the Project. Given Mr Joubert's extensive engagements with the City, NGO's and other interested parties, including the Department of Human Settlements, which Mr McCarthy has either declined to mention to you or was not part of, I disagree with your contention that the facts show any provincial bias against social housing on this site at that stage.

In response, the department did withdraw the call for expressions of interest, but when housing groups then presented a feasibility study making the case for social housing on the site, you told them on more than one occasion to rather focus their efforts elsewhere, as you said in Sea Point there would be intense scrutiny by local ratepayers and other stakeholders — which you were to become not long after.

This is incorrect as I have said before. My recollection is that there was no formal Expression of Interest published at that stage and accordingly DTPW did not withdraw from a call for EOI, nor did it call for one until March 2014. I cannot recall the statement you attribute to me being made by me at any stage.

In a further indication that, under your leadership, the department did not seriously engage over a possible mix of social housing, McCarthy's affidavit reports: "The [feasibility] plan was presented and made available to the DTPW officials responsible for the release of the sites. An offer was made to also assist the province to develop a 'proposal assessment' approach that could more fairly assess the 'social development' value of proposals for the use of the

sites with the highest value immediate return. This was never pursued by the DTPW.”

I presume this is a reference to a Communicare letter received on 20 February 2012, referred to above, and which does include such an offer, however the EOI which was published in March 2014 did not exclude a social housing component or development and as a result Communicare submitted a formal response to the EOI on 17 April 2014.

Further, McCarthy notes: “Despite WCDHS confirming that it needed the Tafelberg site, the DTPW issued a call for expressions of interest in March 2014 in terms of which it proposed to dispose of the Tafelberg site to prospective private investors through a commercial use structure (as opposed to a sale).”

You or Mr McCarthy appear to be unaware of the fact that DoHS subsequently withdrew its expressed interest in this site in August 2015.

It has also been argued that the call for EOI that you initiated in April 2014 was framed in a way that it emphasised the requirement to maximise revenue and did not seriously present a mix of social housing as an option.

The wording of the EOI speaks for itself and the fact is that Communicare responded to it by presenting a social housing option, which belies this assertion.

While this was going on, your former business partner (and brother-in-law?) Gavin Klerck was setting up CapitalGro. He registered it in 2010 (This is not correct, the company was a shelf company, first formed 2010) and it was formally founded in 2013 with you as a board member. (The shelf company was acquired in 2013, and its name changed to CapitalGro). While you still headed the department, and while you were working on the EOI, your CapitalGro bought the Regent for R95m. It stands in the vicinity of the Tafelberg site and its value will be affected by the province's policies and decisions in respect of urban regeneration. This is a clear conflict of interest.

And just seven months after you initiated the EOI and left the department (as you know I had no role in the implementation of the EOI to date) — to become the premier’s special advisor on regeneration — CapitalGro invested another R96.7m in the Equinox building directly across the road from Tafelberg — a key site of the province’s regeneration project. CapitalGro took transfer the month before the department indicated to market its clear intention to sell. At best, this exemplifies the problem of the “revolving door” between public service and the private sector, although it could also be described as a potential conflict of interest.

I have never sought to hide my private business interests from the Western Cape Government. The role of special adviser was offered to me because of my asset management experience in both the private and public sectors.

Please see below concerning my duties as special advisor, which practically did not extend to advice on any Regeneration project. The Equinox was purchased from the same vendor as the Regent, i.e. the one sale followed as a consequence of the other, and the decisions to purchase both those properties were made by the boards based on the value of land in Sea Point, and the limited suitable sites to include in the asset portfolio. The land asset portfolio of the company has continued by the purchase of another two properties in the City.

In terms of the purchase of the Regent: the property was introduced to Gavin Klerck by a

well-known local investment broker, David Ginsberg of GinsbergRich. I was not involved in the Regent transaction whatsoever. Over the past 20 years, the broker has introduced numerous properties to me and understands my investment criteria very well. He sources property on an ongoing basis and has relationships with most major vendors. With the launch of Capitalgro, Klerck briefed Ginsberg on the profile of property Capitalgro was seeking, which, it is worth noting, included commercial/retail properties in all of SAs major metros.

I had no involvement with the proposed sale of Tafelberg in the ensuing period between my departure from DTPW and the Department's announcement of the proposed disposal and the Tafelberg process did not influence the decisions to purchase in any way.

Your dual role as influential official and private sector beneficiary is likely to raise serious questions about the department's bona fides in its approach to the possible disposal of the Tafelberg site.

My questions follow:

1. In respect of the above, please comment, clarify and explain further?

See above.

2. On what date did you acquire shares in CapitalGro and CapitalGro Asset Management? What was your shareholding in each?

I purchased shares in Capitalgro on 8 Sept 2014, which represented 2% of the issued stock. The asset management shares were allocated on 31 Jan 2014, of which I received 250, representing 25% of the issued shares. The asset management shareholders were also awarded 'B class' shares in Capitalgro on the same date, that do not carry any current value, but entitle the holders to a portion of the capital gain on successful realisation thereof over the long term.

3. On what date were you appointed as CapitalGro group chairman?

January 2016

4. Please provide a copy of your declaration of interest in CapitalGro? Please include: The date of the declaration? What exactly was disclosed? To whom? What steps, if any, were taken to mitigate against the conflict of interest?

A disclosure of my private interests was made during my time at DTPW as well as with the Premier's, which included CapitalGro.

5. On what date did CapitalGro initiate negotiations to buy the Regent?

The agreement for the purchase of the Regent was signed on 16 October 2013.

6. On what date did CapitalGro initiate negotiations to buy the Equinox?

The agreement for the purchase of the Equinox was signed on 14 November 2014.

7. On what date were you appointed as the premier's special advisor?

17 June 2014.

8. Did you (and if so, on what date) declare to the premier your interest in CapitalGro and its property interests?

My prior disclosures of my interests in these companies were carried across to the

declaration I made when I joined the Premier's office.

I have updated my disclosures annually as required by law. When I was invited by the Premier to fulfil the role of special advisor, it was agreed that I would do so on a part-time basis with the acknowledgment that I had private interests which I would retain.

9. On what date was your role as the premier's special advisor on regeneration limited to overseeing the Conradie project?

In effect August 2014 when the City and Province agreed to the Conradie site being the focus of a "Better Living Model" Game Changer. The intended purpose for my joining the Premier's office was to assist in the set-up of the Delivery Support Unit (DSU), which was to be responsible for oversight of the Western Cape Government's Game Changers, which I proceeded to do from the outset of my appointment in June 2014. The initial set up of the Unit and its mandates involved a process through which I was allocated to focus on leading the Better Living Model Game Changer, with the development of the Conradie site as its objective.

10. As a major property industry player in the Cape, what steps were taken to mitigate against any potential conflicts of interest in your role as premier's special advisor?

My appointment as a special advisor was on a part time basis and driven by my ability to assist in the implementation of the Conradie Game Changer (an affordable housing mixed-use development), but on the understanding that my private sector interests would remain in place whilst I did this, within the terms formally set by my employer and the confines of the applicable law.

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From: **Gary Fisher** <Gary.Fisher@westerncape.gov.za>

Date: Wed, Jul 6, 2016 at 3:37 PM

Subject: Re: amaBhungane query: CapitalGro, Tafelberg, provincial property policy

To: "craigm@amabhungane.org" <craigm@amabhungane.org>

Hi Craig,

Thank you for affording me the opportunity to respond, which I have embedded in your mail below. It is not an exhaustive response, and I am available to meet with you from Wednesday next week, as mentioned, should you require further clarification.

Sincerely,

Gary.

On 04 Jul 2016, at 3:28 PM, Craig McKune <craigm@amabhungane.org> wrote:

Dear Mr Fisher,

I am a reporter with the amaBhungane Centre for Investigative Journalism. I am doing some research around the provincial government's proposed sale of the Tafelberg school site for a possible article this week. I am particularly interested in your various roles, which seem to suggest a very serious conflict of interest as property owner/developer/manager on one hand and government official/advisor on the other.

Your roles, on my current understanding:

- * Head of provincial public works/property from 2011 to 2014
- * You joined the board and ran CapitalGro during your time as head of public works -- in this role it you were likely to have had a distinct interest in the provincial government's property policies and

management. This seems like a very clear conflict.

I became a non-executive board member of Capitalgro in October 2013, towards the end of my tenure at Public Works. This was declared as per the legislated annual declaration of interests. Once I had left the Department of Transport and Public Works at the end of April 2014, I became a director of Capitalgro in June 2014.

* As head of PW, you oversaw deliberations over the Tafelberg site including personally trying to convince activists not to push for affordable housing at the site -- at the same time as your company was preparing to invest a huge amount of money in the area (see next point).

I have not at any point engaged any activist on the use of the Tafelberg site.

* During your time as head of PW, and shortly after you left the department, your CapitalGro acquired about R190-million in property the vicinity of the Tafelberg site, including a R94m building directly across the road, and another ±R90-million block 500 metres away. CapitalGro took transfer of the Equinox the month before province tendered the sale of the Tafelberg site, and The Regent was acquired not long before that. This looks like a conflict of interest and possible insider trading as the sale of Tafelberg is likely to boost the value of your investments.

A 'Regeneration programme' was established within Public Works with the objective of scoping a number of strategic state-owned properties for their 'highest and best' use, a definition that takes into account the service delivery mandates of government. Included amongst the properties to be assessed were both former Tafelberg school sites, Somerset Hospital, The Government Motor Garage complex, the Prestwich precinct and several others. One of my last acts before leaving the Department of Transport and Public Works in April 2014, was to initiate an Expression of Interest (EOI) process on the aforementioned sites, which typically allows for comment from the market in order to shape the project feasibilities. Following my departure from the department, I had no involvement whatsoever in any of the sites, and I was not privy to the outcome of the EOI, nor was I part of, or aware of the decision to sell Tafelberg school and the subsequent tender process.

* After leaving the department, you joined the premier's office as an advisor, advising on major provincial property issues even though your CapitalGro remains a major player in the market. The conflict of interest appears to continue.

Although I was originally appointed to advise on regeneration in my role as special advisor, my role subsequently became limited to overseeing the design and delivery of the Better Living Model Exemplar project, a mixed-use, mixed-income residentially-led affordable living development on the former Conradie Hospital site. My current role does not extend beyond this particular project.

I would appreciate your comments and clarifications in this regard. Please respond by tomorrow.

Kind regards

Craig McKune

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