

HOW IS THIS EXPROPRIATION?

The Simple Answer

Expropriation means: Using government power to take private property against the owner's will.

The City wants our land. We don't want to sell. They know this. Yet they persist. They're using their planning powers to make conditions so unbearable that we'll be forced to sell "voluntarily."

When the government uses its power to force property transfer - whether they call it "expropriation," "acquisition," or "willing buyer willing seller" - the result is the same: **taking private property from people who don't want to sell.**

What the City Admitted

The City's August 2025 report to Council reveals their actual strategy:

"On review this approach of acquisition of all smallholding properties through an expropriation process was revised, not least due to acquisition process limitations."

What this means in plain language:

- **2018:** City tried to expropriate LSH directly → We said NO → They hit legal obstacles
- **2025:** City still wants LSH → Changed their tactics to avoid legal protections → Same goal, different route

What changed: The method

What didn't change: Taking our land

The Three-Step Plan: Expropriation by Stealth

STEP 1: Place 1,350 households at the only entrance to the LSH

The City will acquire properties at the entrance to Lochiel Smallholdings for "Temporary Relocation Areas" (TRAs). These will house approximately **5,000+ people** relocated from Masiphumelele wetlands.

Critical point: The City admits these "temporary" structures "may become permanent." Since many who are in the TRAs are non-national and will never qualify for social housing.

Translation: 5,000+ people permanently established at the entrance of our community.

STEP 2: Make conditions unbearable

With 5,000+ people suddenly living in high-density TRAs surrounded by smallholdings, the LSDF predicts this will create:

- **"Steep income interfaces"** (City's own words) with remaining properties
- Overwhelming infrastructure pressure (sewage, water, traffic)
- Complete change in area character
- Agricultural and business operations become impossible because no-one can enter.
- Property values collapse
- Quality of life eliminated

Translation: Your property becomes worthless and unlivable.

STEP 3: "Voluntary" sales of remaining properties

Now remaining owners face impossible choices:

- Properties surrounded by high-density settlement
- Infrastructure overwhelmed
- Businesses no longer viable
- Property values destroyed
- No one will buy except the City

The City calls this "willing buyer, willing seller."

We call it what it is: Forced sale through impossible conditions.

The Deception: "70%" vs "100%"

What the LSDF claims:

"The City needs 70% of LSH" - sounds reasonable, right?

What the City's own planner admitted:

At the September 2025 Open House, City planner **Nigel Titus told residents the City "requires ALL of LSH."**

The Mathematical Truth:

- **Total LSH area:** ~28 hectares
- **Less large institutions** (High School, Desmond Tutu Foundation, etc.): ~8 hectares
- **Remaining private land:** 20 hectares
- **City's acquisition target:** 20 hectares

20 ÷ 20 = 100% of available private land

But 20 ÷ 28 = 71% of "total area"

The deception: By including non-targetable government land in the denominator, "70%" sounds partial. In reality, they want **every single privately-owned property.**

Why "Willing Buyer, Willing Seller" Is Impossible

The City claims they'll only buy from "willing sellers." But this is mathematically impossible:

1. **They need "contiguous development"** - can't skip properties
2. **They need 100% of the 50 private properties** to achieve their plan
3. **We already rejected expropriation in 2018** - and we're more united now
4. **We've formed a formal opposition organization.**

**The probability that EVERY SINGLE OWNER voluntarily sells?
Effectively zero.**

The City knows this. That's why they're using Step 2 (make conditions unbearable) to manufacture "willing" sales.

This Is Constructive Expropriation

Constructive expropriation means: Using government powers to make property ownership so difficult that owners are forced to sell, without going through formal expropriation procedures.

How the City does this:

1. **Label productive land "underutilized"** (despite 389+ jobs, NPOs, schools, churches, agricultural activities and small businesses)

2. **Designate it for high-density development** (property values immediately crash)
3. **Create "planning blight"** (no one invests in property condemned for acquisition)
4. **Place TRAs next to remaining properties** (creates the unbearable conditions)
5. **Wait for "voluntary" sales** (owners forced out by circumstances City created)

Legal definition of expropriation: Taking property through compulsion

What the City is doing: Creating compulsion without calling it expropriation

Why Change Tactics? The City's Own Words

"not least due to acquisition process limitations"

Translation: Direct expropriation has legal protections, constitutional requirements, and fair compensation rules. So they're using planning powers instead to achieve the same result without those protections.

What expropriation requires:

- Prove public interest
- Show no alternatives exist
- Pay fair market compensation
- Constitutional challenge rights

What "acquisition" through "willing buyer willing seller" requires:

- None of the above
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THE LEGAL EVASION: Why This Matters

Here's What Makes the City's Strategy So Clever (and Cynical):

When government formally expropriates property, it's an administrative action that can be challenged in court under PAJA (Promotion of Administrative Justice Act) and the Constitution.

But when someone "voluntarily" sells their property in a private transaction, there's no administrative action to challenge.

The City gets the same result (your land) while avoiding legal protections.

What You CAN Challenge vs. What You CAN'T

IF THE CITY USED FORMAL EXPROPRIATION:

- ✓ Immediate judicial review under PAJA
- ✓ Constitutional challenge (property rights under Section 25)
- ✓ Must prove public interest
- ✓ Must show no alternatives exist
- ✓ Fair market compensation required
- ✓ Court oversight throughout process
- ✓ Can challenge BEFORE property transfers

WITH "WILLING BUYER WILLING SELLER":

- ✗ Not an administrative action (it's a private sale)
- ✗ PAJA doesn't apply (no administrative decision to review)
- ✗ No burden to prove public interest
- ✗ No requirement to show alternatives
- ✗ Pay "market price" (crashed by planning blight)
- ✗ No court oversight of individual sales
- ✗ Challenge AFTER sale completes (if at all)

They did this in Hout Bay and it worked, and they plan to do the same here.

Why the New Expropriation Act Matters

The Expropriation Act 2021 (fully implemented by 2023) significantly strengthened property protections.

What formal expropriation now requires:

1. Public interest test - Must prove genuine public need
2. Alternatives analysis - Must show no other options exist
3. Fair compensation - Market value, not depreciated value
4. Procedural fairness - Notice, consultation, hearings
5. Judicial oversight - Courts review the decision
6. Constitutional compliance - Section 25 property rights

The City's problem: If they used formal expropriation under the new Act, they'd have to prove:

Public interest? Hard when 146+ hectares of vacant government land is available

No alternatives? Obviously false

Fair compensation? Would be extremely expensive

Rational planning? Destroying productive land when alternatives exist

They know they'd lose in court.

What "Acquisition Process Limitations" Really Means

Remember that August 2025 quote?

"acquisition of all smallholding properties through an expropriation process was revised, not least due to acquisition process limitations"

"Process limitations" = We'd lose in court under the new legal framework

So they switched to "willing seller" to avoid those protections entirely.

What This Reveals About Intent

The sophisticated legal structuring shows:

1. **They know formal expropriation would fail** (or they'd use it)
2. **They're deliberately avoiding judicial scrutiny** (or they'd welcome it)
3. **They know alternatives exist** (or proving "no alternatives" wouldn't be a problem)
4. **They know compensation would be expensive** (or fair value wouldn't matter)

You don't avoid the front door if you're confident you'd get through it.

You use the back door when you know the front door is locked.

The Bottom Line

When government wants your land and you don't want to sell:

- If they take it directly = Expropriation
- If they make conditions impossible so you "choose" to sell = Still expropriation

The destination never changed: Taking productive private land

Only the route changed: From formal expropriation (with legal protections) to planning blight and forced "voluntary" sales (without protections)

This is expropriation by another name - structured specifically to evade judicial oversight.

What Makes This Particularly Wrong

1. **Hundreds of hectares of vacant government land available** - but they target productive private property
2. **We don't want to sell** - repeatedly stated since 2018
3. **389+ jobs will be destroyed** - mostly employing Masiphumelele residents
4. **Millions in annual economy eliminated** - to place temporary camps (mostly for non-nationals)
5. **A functioning integrated community** - destroyed to theoretically create another
6. **Legal protections deliberately evaded** - using private sales to avoid court oversight
7. **Historical Trauma Repeated** - many owners in LSH or their families have already been forcibly removed in their lifetime.

When government has alternatives but chooses to take your land anyway, using a process designed to avoid judicial review?
That's not public interest. That's strategic evasion.

Questions This Raises

If this isn't expropriation:

1. **Why did the City try to expropriate in 2018** if voluntary acquisition was possible?
2. **Why admit changing tactics due to "acquisition process limitations"** if the outcome is different?
3. **Why not use formal expropriation under the Expropriation Act 2021** if your case is so strong?
4. **How can you achieve 100% voluntary acquisition** from a community that rejected expropriation?
5. **Why structure this as private sales** if not to avoid PAJA judicial review?
6. **Why target 100% of private land** while claiming "willing seller" basis?

7. **Why not develop vacant government land** that has no acquisition costs or opposition?

The City can't answer these without admitting what this really is:

Expropriation by stealth. Property taking without legal protections. Forced transfer disguised as voluntary sale. Administrative action restructured as private contracts to evade judicial oversight.

The method is new. The outcome is the same. The legal protections are deliberately evaded.

Our land, against our will, for government use, without court oversight.

That's the definition of expropriation - just with better legal strategy.

And the fact they need better legal strategy tells you everything about the merits of their plan.