4 July 2025

To: Honourable Mayor Dada Morero
Mayoral Office, ACH Directorate

% Mr Vuyisile Mshudulu
Director, Arts, Culture and Heritage
City of Johannesburg
VuyisileMsh@joburg.org.za

Dear Mayor Morero,

**RE: Suspension of participation in the AGC**

We write to your offices in the context of having reached a point where we find that our involvement in matters related to the Johannesburg Art Gallery to be so compromising as to no longer be tenable. We take this opportunity to outline a set of concerns that led the non-governmental members of the Art Gallery Committee to suspend our participation in this structure until some basic conditions are met. We also take this opportunity to once again clearly and unambiguously set out our views on what we believe are the general and necessary next steps for the City to take with regard to the collection, the building and the repositioning of the institution in the cultural life of the City.

We note the manner in which the AGC has been presented by the City and the JDA as being the principal source of guidance on matters relating to the relocation of the collection, most recently at the public consultation on the 27th of March. In the preceding and the ensuing period, our general experience has however been of being left in the dark as to the plans and the intent of the City, often becoming aware of these plans through other processes – the public announcement by the Mayors office on the 15th of April that agreements regarding the relocation would be finalised by the end of that month, reports to the Presidential Workstream and so on. We find this situation compromising, exposing the membership of this body to reputational and professional harm, not for the first time in this process. This harm is compounded by the city's lack of meaningful progress on the relocation of the collection.

We note the very substantial quantities of voluntary time, goodwill and expertise that members of the AGC have made available to the City over the past years and particularly the last 12 months. We also note with concern the manner in which we are invited to attend meetings at short notice with no proper advance documentation or clarification of the purpose of such meetings. All of this we see as displaying a certain (we assume unwitting) disregard for the value of our time, and indeed the

time and attention of external stakeholders in general, in a consultative process that appears to be both poorly managed and cosmetic rather than substantive.

While we welcome the Mayors commitment to resume his role on the Art Gallery Committee, this has come with little clarity as to what this would practically entail, as well as clarity on what steps the City would take in addressing how the remaining gaps in the governmental membership of the committee will be addressed. Recent communication to members of the AGC that confirmed meetings cannot go ahead without the presence of the mayor has rendered the AGC entirely mute and incapable of meaningful contribution, and compounds the sense that our time and expertise are supplementary to the spectacle of consultation.

We then take note of the proposed operational policy for the AGC put forward by the Directorate for arts, culture, and heritage. We have carefully reviewed the document and note the following:

- There is much of value within the document regarding the operational and practical dimensions of the committee's work with regard to loans, acquisitions and the general administration of the collection.
- The document advances a role for the AGC that locates it effectively as a sub-structure of the city administration, in a manner that would impose a myriad of obligations on the part of the Committee to the City, and would make the committee essentially accountable to the City administration
- The document effectively evacuates the committee of any role in the governance/oversight of the institution and the collection in a manner which we see as contrary to both the spirit and the letter of the Deed of Donation. Indeed, the resumption of the Mayor's role on the committee would seem to represent an acknowledgement that the role of the AGC extends beyond the administration of the collection and into the realm of institutional governance. This is not, however, reflected in the document that has been presented to us.
- The relegation of the AGC to effectively functioning as an acquisitions committee also devoids the JAG of regular public and expert input or contribution to the ongoing future vision of the JAG and, most urgently, its ongoing crisis. In effect, this can be perceived as a lack of investment in addressing this crisis.
- We also note that the document prescribes terms of engagement for other parties (such as the AAJCT) in a manner that we find unhelpful and likely to further alienate these stakeholders.

We are of the view that no further progress can be made in defining either a policy framework or operational guidelines for the AGC or, more importantly, a future governance framework for the institution more generally, until there is clarity on the legal implications of the 1913 Deed of Donation in the present with regard to questions of governance, management and accountability.

We believe that such an opinion should be obtained entirely independently of the City's legal offices (potentially through the Office of the President in the context of the currently formed Presidential workstream addressing matters related to the JAG, or alternatively, another party with a position of analogous neutrality in the matter). We have communicated this position to that forum. We believe that pressing questions around the governance framework for the institution cannot be addressed or resolved until there is an authoritative legal opinion on these matters, and have outlined in an attached document what we see as being the key questions to be addressed.

Finally, we note with concern the ongoing and unproductive conflict regarding a way forward for the relocation of the collection and future pathways for the institution in general, with both the City/JDA and the Friends of the JAG pursuing parallel and contradictory processes of public engagement on these questions, and now once again in the context of the Presidential workstream set up to address matters relating to JAG. We see that this process may impose problematic terms of engagement on the City with far-reaching implications for the future of the institution, and its governance.

We believe that the City now needs to proactively engage with an independently facilitated process that enables a core framework of constructive partnership between the City, the Friends of JAG and the Centenary Trust to be given proper effect. This process will involve focused attention to a range of technical and administrative questions that need to be resolved outside of (but reported back to) the Workstream. We believe that independent professional facilitation should bring the adversarial imposition of terms of engagement by either side to an end, and which would finally bring stakeholders into constructive alignment around the achievement of a set of objectives that are shared by all parties - the relocation of the collection, the refurbishment of the building, and the rethinking of and strategic repositioning of the institution.

In summary, the resumption of our role on the committee will be contingent on:

1. The City’s constructive engagement with independent legal advice which would provide guidance on the implications of the 1913 Deed of Donation for the governance and management of the institution going forward.
2. The City ensuring that the AGC is fully apprised of plans regarding the relocation of the collection at all stages of the process, with clear opportunities for the provision of meaningful advice; this would include:
    a. Being advised timeously of the City’s plans and relevant meetings
    b. Being properly and timeously briefed with relevant documentation
    c. Having submissions from the AGC both acknowledged and responded to.

3. Clarifying the role and future engagement of the Mayor - or a representative of his office, given the demands on the Mayors time - in meetings of the AGC, and commitment to a sequence of dates for such meetings, and steps being taken to resolve governmental representation on the committee more generally A clear framework for the ongoing productivity of the AGC should the mayor be unavailable is also necessary.
4. That the City commits to an independently facilitated and consequential process of constructive engagement with external stakeholders which would:
    a. rapidly resolve a way forward regarding the assessment, valuation, digitisation and temporary relocation of the collection, and the management and resourcing of this process
    b. map out a clear process around the refurbishment of the building in a manner which would also enable the bringing together of private and public resources to enable the realisation of this significant undertaking.
    c. work with stakeholders to develop a new vision and set of governance arrangements for the institution, which would enable sustainability and meaningful engagement of external partners, while respecting the City's fundamental role as custodian of the infrastructure and the collection.

We trust that these serious concerns will be addressed with the urgency and commitment required to enable constructive re-engagement with the future of the Johannesburg Art Gallery, and we remain open to dialogue on any matters that may require further clarification.


Signed members of the AGC

| | |
|---|---|
| Pfunzo Sidogi | SidogiP@tut.ac.za |
| Nontobeko Ntombela | nontobekon@gmail.com |
| Molemo Moiloa | moiloa.molemo@gmail.com |
| Melissa Goba | melissagoba15@gmail.com |
| Joseph Gaylard | coelacanth@iafrica.com |

## JAG Legal opinion – outline terms of reference (DRAFT)

The 1913 Deed of Donation addresses a variety of governance and management matters relating to the collection of art bequeathed to the people of Johannesburg and vested in the City by the original donors of the founding collection, including provision for the establishment of an art Gallery Committee with some authority over the collection, and by extension, the institution. More than one hundred years later, there is significant lack of clarity as to the mandate and powers conferred by the Deed on the Art Gallery Committee and to what extent these remain in force and/or binding on the administration of the City of Johannesburg as the entity charged by the Deed with the management and care of the collection.

In order to chart a constructive way forward for the work of the committee - and as a point of departure for rethinking the governance and institutional arrangements around the institution - a legal opinion is sought that would clarify the mandate, powers and operation of the AGC. Consideration would need to be given to the practical application of same in the current legislative and regulatory context, and on how and in what ways the Deed can be altered/updated and brought into alignment with government legislation and regulation in the present. This is also to ensure that any changes that are made or consequent steps that are taken will withstand legal scrutiny and possible challenge.

Key dimensions include, but are not limited to:

1. Clarify what authority the Deed confers on the AGC from a governance and management point of view, noting that:
    a. The Deed defines a management responsibility for the “Municipal Council… subject to the **control** of the body hereinafter referred to as the Art Gallery Committees”. Is this a general governance role? Does it involve the power to instruct/direct the municipal executive on matters relating to the collection and the institution more generally?
    b. Later the Deed compels the City Council to “consult with, seek the advice and consent” of the AGC on any matter relating to acquisitions, loans, repair/restoration or the physical removal of work from the gallery, and to seek the committees’ advice on the appointment of a curator. This seems to define a narrower power/locus of control. Does it qualify/limit or just provide non-exhaustive clarification of the role?
    c. In general to clarify to what extent the decisions of and/or the withholding of consent on the part of the Committee on all of the above matters are binding on the City administration, and to what extent the advice of the Committee needs to be followed by the City administration.

2. Clarify the framework for membership under a changed system of government to that which was in effect in 1913, with reference in particular to the presence of a representative of the Union of South Africa.
3. Clarify in what ways the Deed of Donation would be in conflict with the current legislative and regulatory framework of government in general, and local government in particular. Where would there be points of tension? How could these be resolved?
4. To clarify the question of the extent to which alterations to any aspect of the Deed can be effected and how/under what circumstances? While the deed empowers the AGC “to make rules and regulations for the conduct of its business”, it is unclear whether this extends to altering the provisions contained in the document with regard to mandate, powers, composition and so on. If alteration were to be made, how would these be given legal effect?