



ITEM: C 62/04/21

ANNEXURE A

SUPPLEMENTARY QUESTION TO THE EXECUTIVE MAYOR IN TERMS OF RULE 22 OF THE RULES OF ORDER: COUNCIL MEETING: 29 APRIL 2021

Speaker,

The Executive Mayor was not present when Council dealt with my question. The Deputy Mayor was unable to respond to my follow up. The chair ruled that I should submit a supplementary question in writing. Here is the supplementary question:

Mr Executive Mayor,

- (1) In your response to my question, Mr Mayor, you indicated that while, “over 800 cities have declared a climate emergency to solidify their stance,” you questioned whether this was “the right decision for Cape Town?” Surely Mr Mayor is it not vitally important to be on the front foot considering that to be forewarned is to be forearmed?
- (2) You also replied that “legal advice is, however, not of the opinion that ‘emergency’ and ‘state of emergency’ have different legal meanings. How can that be Mr Mayor? Any lawyer, worth his/her salt, will know that when a “state of emergency” is declared by the President, the constitution is suspended while in the case of a financial or health or accident emergency, the solution is to seek prompt assistance from those who are qualified to give it to save a person’s possession or health or life? How can they be equated Mr Mayor when they are fundamentally different things?
- (3) Finally, Mr Mayor, you stated that “it should be noted that Vancouver’s emergency plan is estimated to cost R6 billion over 5 years but in the context of a carbon tax 50 times our effective rate”. Mr Mayor, where did you get that from and did you or the researchers who assisted you in drafting the reply have a good look at the administrative report regarding Vancouver’s Climate Emergency Response, which can be found by clicking on the link below, to understand why the Vancouver City Council unanimously agreed to support a motion brought by Christine Boyle to declare a climate emergency and having looked at that response can you still sustain your argument that it is not a right solution for Cape Town to declare a climate emergency?

[Report - Climate Emergency Response: 2019 Apr 16 \(vancouver.ca\)](#)

CIlr M F Cassim (COPE)

31 March 2021

ANNEXURE B

REPLY FROM THE EXECUTIVE MAYOR TO SUPPLEMENTARY QUESTION FROM CLLR M F CASSIM FOR COUNCIL MEETING ON 29 APRIL 2021

I am informed as follows:

Semantically, one might assert that one could be forewarned but respond (be forearmed) in a variety of ways. The City might be [is] on a 'locally appropriate' metaphorical front foot through measures other than an emergency declaration.

The 800 cities statistic needs to be interpreted with very great caution. Local jurisdiction emergency declarations are highly concentrated in Western Europe (over half), particularly Britain (a third of the total) and Developed Asia (almost a fifth).

Very few developing country local jurisdictions have declared climate emergencies and none in Africa.

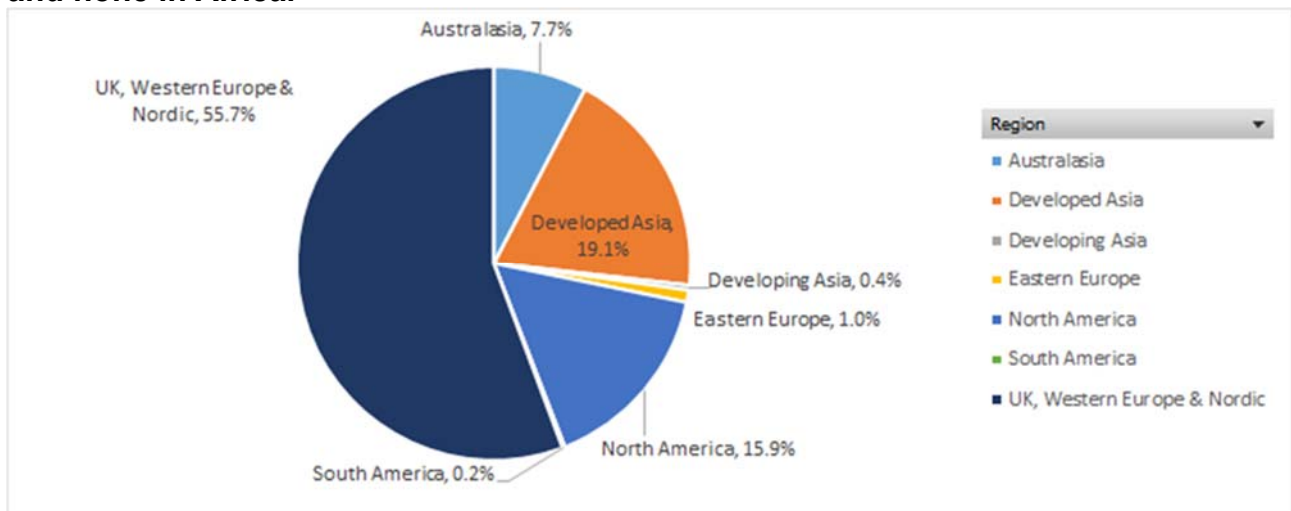


Figure 1: Regional Distribution of Local Jurisdictions Declaring Climate Emergencies in February 2021 (Source: <http://bit.ly/ce-governments>)

Some of the jurisdictions who have declared climate emergencies are quite small, for example Bass Coast Shire in Australia population 35,327. In the public data assessed, 168 jurisdictions declaring climate emergencies had populations of greater than 500,000. Some of the smaller conurbations may however be subsidiary to larger cities. To put this number in context the UN estimated 1065 cities had populations greater than 500,000 globally in 2018.¹

Disaster declarations

South Africa has a statutory regime for the declaration of states of emergency, established by Section 37 of the Constitution and further developed under the State of Emergency Act No. 64 of 1997. The constitutional section requires that an Act of Parliament be enacted to give effect to Section 37. This was done in the form of the State of Emergency Act, which confers power upon the President to declare a state of emergency.

Councillor Cassim is suggesting that the City act outside of this statutory regime, and that it declare a global climate emergency. The legality of this proposed course of action must be

¹ https://www.un.org/en/events/citiesday/assets/pdf/the_worlds_cities_in_2018_data_booklet.pdf

assessed in light of the statutory regime for the declaration of states of emergency, and the constitutional powers and authority of local government.

As mentioned above, the Constitution, read together with Act 64 of 1997, creates a regime with specific statutory authority vested in Parliament and the President to declare states of emergency. These powers are to be exercised “only in terms of an Act of Parliament”, and “only when the life of the nation is threatened by war, invasion, general insurrection, disorder, natural disaster or other public emergency, and “only where the declaration is necessary to restore peace and order” (Section 37(1)(a) and (b)). The use of the word “only” indicates that it is not competent for anyone to declare a state of emergency outside of these stipulations.

There are reasons for the restriction on the declaration of states of emergency. Firstly, they warrant suspension of the rights reflected in the Bill of Rights, as per Section 37(4). This is a drastic consequence. Secondly, they empower the state to make special regulations, which includes special financial allocations to remedy the emergency. Along with such empowerment may come a legal responsibility or obligation to deploy resources to address the emergency. Such an obligation or responsibility could have the effect of compelling government to act in a particular manner. If government does not act fairly and reasonably to remedy the disaster, it could be challenged and incur liability not only for remedial measures but also for damages. Thus there is risk inherent in making such a declaration.

The question must be asked whether the City is legally empowered to act outside of the statutory regime, as envisaged by the councillor. This is problematic for three reasons. The first is that one cannot wish away the statutory regime – it is not only grounded in national legislation but also in the Constitution, which is the supreme law (Section 2 of the Constitution). The second is that when specific legislation exists governing a specific situation, that legislation prevails over any general legislative or common law principles, as per the principle of “*generalia specialibus non derogant*” or “the general does not detract from the specific”, as enshrined in our law. This would mean that the specific legislation governing the declaration of emergencies as outlined above prevails over any general powers that the City may have. The third difficulty is that the City has legal authority only over matters located within or pertaining to the Cape Town metro, as demarcated under the Local Government: Municipal Demarcation Act. It does not have authority to make declarations with regard to national or global matters. Associated with this is the fact that in terms of Section 151 of the Constitution, which is the Section designating the status of municipalities, they have the power to govern, on their own initiative, the local government affairs of their communities (Section 151 (3)). This precludes governance acts which have consequences and effects outside of the municipal jurisdiction. Effectively it would mean that the City can govern climate change matters pertaining to the Cape Town metro only.

The Financial Context of Vancouver’s Emergency Climate Action Plan

The cited figures for Vancouver’s climate action plan are confirmed below. The plan (October 2020) developed in response to the document the Councillor shared (April 2019) is here:

<https://council.vancouver.ca/20201103/documents/p1.pdf>

Please see Page 6 of document on above hyperlink:

“Each of the actions has been costed and incorporated into an overall investment strategy and financial framework for the Climate Emergency Action Plan to ensure that the City is resourced to follow through on these commitments. In total, it is estimated the City will need to invest close to \$500M over the next five years to implement the CEAP, with those funds expected to come from the existing capital plan, new fees and charges from climate emergency actions, potential increase in investment in climate emergency actions in the next capital plan, and contributions from senior levels of government and other partners. As well, projects that rely on City investment will be delivered using more cost-effective approaches.”

CAN\$500 million = 5,859,370,382.74 South African Rand (on 01/04/2021)

The carbon tax comparison should be clearly understood. The 50-fold multiplier is for our current ‘effective’ carbon tax rate for most liable parties compared to the future Canadian tax rate. The point being that the Canadian tax regime directly incentivises rapid decarbonisation leading up to 2030 at least an order of magnitude more than in South Africa where large real increases in the carbon tax seems unlikely. The Vancouver emergency declaration, with its implications of short and medium term investment across public and private spheres, is therefore strongly supported both by budgets and incentives across tiers of government within a federal system with highly devolved powers.

Table 1: Comparison of South African and Canadian Carbon Tax Regimes

	CAD	ZAR	Multiple at Effective ZA Tax Rate R120/ton	Multiple at Effective ZA Tax Rate R40/ton
Canadian Carbon Tax now	30	348.59	3	9
Canadian Carbon Tax 2030	170	1975.37	16	49

* Canada will increment its carbon tax till 2030 at \$10 annually till 2023 and thereafter at \$15 annually

(<https://www.nortonrosefulbright.com/en/knowledge/publications/d58ef644/canada-to-increase-carbon-taxes-by-467>)

Vancouver City Council’s Reason’s for Declaring a Climate Emergency

Councillor Cassim asked:

“did you have a good look at the administrative report regarding Vancouver’s Climate Emergency Responseand understand why the Vancouver City Council unanimously agreed to support a motion brought by Christine Boyle to declare a climate emergency and having looked at that response can you still sustain your argument that it is not a right solution for Cape Town to declare a climate emergency?”

The City of Vancouver Administrative Report RTS No 12978 cited by the councillor does not detail the reasons for the emergency declaration explicitly or any debate that may have occurred. The context section does however highlight the following drivers:

- The Risks of Climate Breakdown
- Limiting Global Warming to 1.5°C
- Growing Number of Climate Emergency Declarations
- Government of British Columbia Ramping Up Climate Action
- Local and Regional Governments Ramping Up Climate Action
- Reducing Carbon Pollution has Multiple Benefits

Many of these are common to Cape Town's current move to more ambitious plans. Interestingly Vancouver draws a distinction between itself and developing jurisdictions (Pg 8 of document on hyperlink)

"D. Helping Developing Jurisdictions Transition to Renewable Energy

To fully be aligned with 1.5°C, jurisdictions that are wealthy by global standards (including Vancouver) need to support emissions reductions in jurisdictions without the same resources to improve energy efficiency and transition to renewable energy. Without a willingness to provide this support, it is highly unlikely that developing jurisdictions will have the resources to transition fast enough.

The underlying rationale for wealthier jurisdictions providing support is that we continue to have much higher per capita emissions, and we have accumulated a great deal of our wealth through the burning of fossil fuels since the beginning of the last century. Developing jurisdictions have contributed comparatively little to global emissions and are the least equipped to reduce emissions and prepare for its impacts.

What Vancouver's role could be in helping developing jurisdictions transition to renewable energy is not well defined. Project 14.i in the accelerated actions is intended to begin the work of figuring out what that role could be."

Councillors in Vancouver will have material causes for declaring an emergency some of which are extracted above. These may be held in common to a greater or lesser degree with the other 799 jurisdictions that had declared emergencies toward the end of 2020. This does not speak to whether they are material to Cape Town's context. Without the Councillor making clear and explicit the reasons and justifications he believes are material to his case for Cape Town specifically, it is challenging to address the substance of the question.

Conclusions

The supplementary questions appear to assume the justifications for an emergency declaration are self-evident and the reasons for opposing are derived from specific interests only rather than the general interest. The data for declarations alone however suggests there are two sides to the debate in a developing country context.

Responses by the climate change planning team to previous and similar motions brought by the Councillor are attached here for reference. These explain the current climate change planning processes underway, which are **aligned with requirements of science and well exceeding national policy but accounting for what is realistic, achievable and financially viable for Cape Town**. Previous responses have also emphasised the issue of prematurely declaring an emergency and not having the financial means to act on it in the manner of developed world local jurisdiction. Furthermore, it is worth noting that the current plan in process is already part of a 'burden sharing' framework that apportions different rates of decarbonisation to developing and developed cities.
