



CITY OF CAPE TOWN  
ISIXEKO SASEKAPA  
STAD KAAPSTAD

## REPORT TO SUBCOUNCIL 6

1 ITEM NUMBER           **06SUB20/11/20**

2 SUBJECT

**PROPOSED LEASE OF A PORTION OF PUBLIC OPEN SPACE BEING ERF 14930 BELLVILLE, SITUATED AT JAPONIKA ROAD, BELHAR, BELLVILLE FOR GARDENING PURPOSES: ARIEFA SADEER**

**ONDERWERP**

**VOORGESTELDE VERHURING VAN 'N GEDEELTE VAN OPENBARE OOP RUIMTE NAAMLIK ERF 14930 BELLVILLE, GELEË IN JAPONIKAWEG, BELHAR, BELLVILLE: VIR TUINMAAKDOELEINDES: ARIEFA SADEER**

**ISIHLOKO**

**ISIPHAKAMISO SOKUQESHISWA KWESIQEPHU SOMTHABALALA WEBALA LOLUNTU ELISISZA-14930 BELLVILLE, ESISE-JAPONIKA ROAD, BELHAR, E-BELLVILLE, KULUNGISELELWA IMIBANDELA YEZASEGADINI: KU- ARIEFA SADEER**

**L3435**

**PTMS NO: 130004341  
File Ref No: TYG 14/3/6/1/2/14930/4  
(Category 4)**

3 **DELEGATED AUTHORITY**

The report is for comment by subcouncil to the competent authority in terms of Part 24, Delegation 10(1).

"To comment to the competent authority on the granting of rights to use, manage or control City immovable assets such as land, property and buildings and to recommend conditions of approval where deemed necessary."

- In terms of delegation Part 27B paragraph 19(7), the following delegation was conferred upon the City Manager. The City Manager has sub-delegated this delegation to the Director: Property Management.

"To approve the granting of rights to use, control or manage capital assets: Capital assets less than R10 million, longer than 3 years (<R10 million and > 3 years) and capital assets more than R10 million, not longer than 3 years (>R10 million and <3 years) for the following categories:

- a) Social Care Leases: Leases to Social Care organisations) NPOs, NGOs, sports organisations not for profit) at a tariff rental as approved by Council annually.
- b) Non-viable gardening and security leases: Leases of non-viable portion(s) of municipal land to adjacent land owners at a tariff rental as approved by Council annually."

Provided that this delegation may only be exercised after considering the comment from the Sub-council in whose area of jurisdiction the capital is situated.

- Final decision lies with Director: Property Management.

#### 4 EXECUTIVE SUMMARY

|                                      |  |      |  |
|--------------------------------------|--|------|--|
| PURPOSE OF REPORT                    | To consider the proposed lease of a portion of City owned land, being a portion of Erf 14930 Bellville, in extent approximately 164m <sup>2</sup> as shown hatched on the attached Plan No TA 960v1 to Ariefa Sadeer for gardening and security purposes |      |  |
| Site extent                          | 167m <sup>2</sup>  |      |  |
| Submission date                      | 28 <sup>th</sup> May 2018  |      |  |
| Current zoning                       | Public open space  |      |  |
| Current usage                        | Gardening and security purposes  |      |  |
| Proposed usage                       | Gardening and security purposes  |      |  |
| WARD CLLR                            | NOTICE DATE  | WARD |  |
| Johanna Martlow                      | 20 <sup>th</sup> November 2019   | 22   |  |
| Internal circulation date            | 10 <sup>th</sup> September 2018  |      |  |
| Internal department comments         | The application for lease was circulated to the various departments and was supported by all.  |      |  |
| Public participation outcome summary | Advertised in the Cape Times and Die Burger on 7 <sup>th</sup> June 2019 (Bulk Ad) No objections were received.  |      |  |
| Viable                               | Yes  | No   |  |

|  |  |   |         |  |               |  |  |  |                  |                              |  |  |
|--|--|---|---------|--|---------------|--|--|--|------------------|------------------------------|--|--|
|  | The subject property is regarded as non-viable land which only has value to the abutting landowners in light of the fact that it cannot be developed or function as a separate entity. This property transaction may be approved without any competitive process having been followed on the basis that no purpose would be served by a competitive process.     |   |         |  |               |  |  |  |                  |                              |  |  |
| Recommended decision                   | Approval   | X | Refusal |  |               |  |  |  |                  |                              |  |  |
| Regulation 34(1) In-principle approval | Granted by Director: Property Management in terms of delegated authority after 21 June 2018  |   |         |  |               |  |  |  |                  |                              |  |  |
| Factors motivating recommendation:     | <ul style="list-style-type: none"> <li>The leasing of the land will relieve Council of the maintenance and security burden.</li> <li>The existing use of the property will continue</li> <li>The City will receive rental</li> </ul>   |   |         |  |               |  |  |  |                  |                              |  |  |
| Strategic intent                       | <b>SFA 1 : an OPPORTUNITY City of Cape Town</b> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%;">Objective 1.1</td> <td colspan="3">Positioning Cape Town as forward looking globally competitive City</td> </tr> <tr> <td>Programme 1.1(g)</td> <td colspan="3">Leveraging the City's assets</td> </tr> </table> |   |         |  | Objective 1.1 | Positioning Cape Town as forward looking globally competitive City |  |  | Programme 1.1(g) | Leveraging the City's assets |  |  |
| Objective 1.1                          | Positioning Cape Town as forward looking globally competitive City   |   |         |  |               |  |  |  |                  |                              |  |  |
| Programme 1.1(g)                       | Leveraging the City's assets   |   |         |  |               |  |  |  |                  |                              |  |  |

## 5 RECOMMENDATIONS FOR CONSIDERATION AND COMMENT BY THE RELEVANT SUBCOUNCIL

It is recommended that the lease of a portion of City owned property, being a portion of Erf 14930 Bellville, situated at Japonika Road, Belhar, Bellville, as shown hatched and lettered ABCD on the attached Plan No TA 960v1 marked annexure A, in extent approximately 164m<sup>2</sup>, to Mrs Ariefa Sadeer, owner of Erf 14944 or her successors in title, be approved subject to inter alia the following conditions:

- a) A tariff rental of R1 096,52 per annum excluding VAT calculated at the rate applicable at the time of transaction be payable. Rates not applicable;
- b) The lease will endure for a period of ten years;
- c) The rental will be adjusted annually in terms of the rental tariff structure as approved by Council;
- d) The property be used for garden and security purposes only;
- e) Subject to such further conditions to be imposed by the Director: Property Management in terms of her delegated authority;
- f) Subject to compliance with any other statutory requirements;

- g) No compensation will be payable for any improvement made to the property;
- h) All outstanding accounts with the City of Cape Town must be settled;
- i) There is no construction allowed over the sewer;
- j) Works will be carried out as indicated on plans;
- k) No mechanical plant to be used within 3,0m of Eskom underground cables;
- l) All services to be verified on site;
- m) Cross trenches to be dug by hand to locate all underground sevices before construction work commences;
- n) If Eksom underground services cannot be located or is grossly misplaced from where the wayleave plan indicates then all work is to be stopped
- o) In cases where proposed services run parallel with existing underground power cables the greatest separation as possible should be maintained with a minimum of 1000mm
- p) Where proposed services cross underground power cables the separation should be a minimum of 300mm with protection between services and power cables
- q) No manholes; catch-pits or any structure to be built on top of existing underground services;
- r) Only walk behind (2ton Bomac type) compactors to be used when compacting on top of an 1 meter either side of underground cables;
- s) If underground services cannot be located then the CNC should be consulted before commencement of any work.
- t) No mechanical plant to be used within 3m of Eskom 11kV/LV Overhead Power lines
- u) Openserve infrastructure will not be affected, however care should still be taken should it be evident that there is in fact Openserve network present on the actual sites.

**AANBEVELINGS VIR OORWEGING EN KOMMENTAAR DEUR DIE BETROKKE SUBRAAD**

Daar word aanbeveel dat die verhuring van 'n gedeelte van openbare pad, 'n gedeelte van (openbare oop ruimte), naamlik erf 14930, geleë te Belhar, Bellville, gearseer en met die letters ABCD aangetoon op die aangehegte skets TA 960v1, gemerk bylae A, ongeveer 164 m<sup>2</sup> groot, aan Ariefa Sadeer, eienaar van erf 14944, of haarregsopvolgers, goedgekeur word onderworpe onder andere aan die volgende voorwaardes dat:

- a) 'n Tariefhuurbedrag van R 1096,52 per jaar, BTW bereken teen die koers van toepassing ten tye van die transaksie uitgesluit, betaalbaar is. Eiendomsbelasting nie van toepassing nie;
- b) Die huurooreenkoms vir 'n tydperk van tien jaar sal duur;
- c) Die huurbedrag jaarliks aangepas sal word volgens die huurtariefstruktuur soos deur die Raad goedgekeur;
- d) Die eiendom slegs vir tuinmaak- en sekuriteitsdoeleindes gebruik word;
- e) Onderworpe aan sodanige verdere voorwaardes opgelê deur die direkteur: eiendomsbestuur ingevolge haar gedelegeerde bevoegdheid;
- f) Onderworpe aan die nakoming van enige ander statutêre vereistes;
- g) Geen vergoeding betaalbaar sal wees vir enige verbeteringe aan die eiendom nie;
- h) Alle uitstaande rekeninge met die Stad Kaapstad vereffen moet wees;
- i) Geen konstruksie word oor die rioolleiding toegelaat nie;
- j) Werk sal uitgevoer word soos aangedui op die planne;
- k) Geen meganiese aanleg binne 3 m van die ondergrondse kabels van Eskom gebruik word nie;
- l) Alle dienste moet op die perseel geverifieer word;
- m) Kruisslote moet per hand gegrawe word om alle ondergrondse dienste op te spoor voordat daar met konstruksiewerk begin word;
- n) Indien Eskom se ondergrondse dienste nie gevind kan word nie, of waar dit verkeerd geplaas is soos wat die gebruiksregplan aandui, moet alle werk gestaan word;

- o) In gevalle waar voorgestelde dienste parallel met bestaande ondergrondse kragkabels loop, moet die grootste moontlike skeiding met 'n minimum van 1000 mm gehandhaaf word;
- p) Waar voorgestelde dienste ondergrondse kragkabels deurkruis, moet die skeiding 'n minimum van 300 mm wees met beskerming tussen dienste en kragkabels;
- q) Geen mangate nie, vangputte of enige struktuur mag bo-op bestaande ondergrondse dienste gebou word nie;
- r) Slegs Bomag-kompakteerders van 2 ton gebruik word wanneer daar gekompakteer word bo-op ondergrondse kabels (1 m ruimte aan weerskante);
- s) Indien ondergrondse dienste nie opgespoor kan word nie, moet die CNC geraadpleeg word voordat daar met enige werk begin word.
- t) Geen meganiese aanleg mag binne 3 m van Eskom 11kV / LV- oorhoofse kragdrade gebruik word nie;
- u) Openserve-infrastruktur sal nie geraak word nie, maar daar moet nog steeds versigtig opgetree word as dit duidelik is dat daar in werklikheid Openserve-netwerke op die werklike persele aanwesig is;

#### **IZINDULULO UKUBA ZIQWALASELWE KWAYE KUVAKALISWE ULUVO LIBHUNGANA ELIFANELEKILEYO**

Kundululwe ukuba makuphunyezwe uqeshiso lwersiqephu sesitrato soluntu esiyindawo evulelekileyo yoluntu, esisiza-14930 esise-Belhar, e-Bellville, esibonakaliswe ngomzobo nangonobumba abakhulu u-ABCD kumzobo oqhotyoshelweyo ongu-TA 960v1, esiphawulwe kwisihlomelo-A, esibukhulu obumalunga ne-164 m<sup>2</sup>, kuNkskz Ariefa Sadeer, ongumnini wesiza-14944 okanye kwabangena ezhilangwini zakhe ngokwetayitile, ngokuxhomekeke ekuthotyolweni kwale miqathango ilandelayo, yokuba:

- a) Makuhlawulwe ixabiso lerenti elingama-R1 096,52 ngonyaka (ngaphandle kweRhafu-ntengo) ngexabiso elibalwe ngexabiso elijoliswe kwixesha elo ionaniselwano. liRhafu zokuhlala azihlawulwa;
- b) Uqeshiso luyakuthi luqhubekeke isithuba seminyaka elishumi;
- c) Irenti iyakuthi ilungelelaniswe rhoqo ngonyaka ngokwesakheko samaxabiso serenti njengoko siphunyezwe liBhunga;
- d) Ipropati le iyakuthi isetyenziselwe imibandela yezasegadini nokhuseleko kuphela;

- e) Ngokuxhomekeke kweminye imiqathango eyakuthi inyaneliswe nguMlawuli woLawulo lwePropati esebeanza amagunya akhe awagunyaziselweyo;
- f) Ngokuxhomekeke ekuthotyelweni kwayo nayiphina imimiselo engeminye yomthetho;
- g) Akukho mbuyekezo iyakuthi yensiwe ngalo naluphina uphuculo oluthe lwenziwa kwipropati;
- h) Kufuneka kuhlawulwe zonke ii-akhawunti ezingekahlawulwa kwiSixeko saseKapa;
- i) Akuvumelekanga ulwakhiwo kumjelo wogutu;
- j) Imisebenzi iyakuthi iqhutywe njengoko kubonakalisiwe kwiiplani;
- k) Akuvumelekanga ukuba kusetyenziswe iziko lokukhandela kumgama oziimitha ezi-3,0 m kwiikhebhuli ezingaphantsi komhlaba zabakwa-Eskom;
- l) Zonke iinkonzo kufuneka ziqinisekiswe kwisiza;
- m) Kufuneka kombiwa imigxunya enqamlezileyo ukuze kubonwe zonke iinkonzo ezingaphantsi komhlaba ngaphambi kokuba kuqaliswe ngomsebenzi wolwakhiwo;
- n) Ukuba azifumaneki iinkonzo ezingaphantsi komhlaba zabakwa-Eskom okanye ezithe zabekelwa ngempazamo kwenye indawo hayi apha iplani yoyilo ibonakalisa ngakhona, ke ngoko kufuneka kumiswe wonke umsebenzi;
- o) Kwiimeko apha iinkonzo zihamba ngokunxusene neekhebhuli zombane ezingaphantsi komhlaba ezisele zimiselwe, kufuneka kugcinwe ukuqevelana olungumlinganiselo oli-1000 mm
- p) Apha iinkonzo eziphakanyisiweyo ezingumla iikhebhuli zombane ezingaphantsi komhlaba, ukuqevelana kufuneka kubengumlinganiselo wama-300 mm apha kukho ukhuseleko phakathi kweenkonzo neekhebhuli zombane;
- q) Akuvumelekanga ukuba kumiselwe izitamkoko, izityana ezakhelwe kumbhobho wogutu okanye nasiphina isakheko esikwincopho/kumphezulu weenkonzo esele zimiselwe ezingaphantsi komhlaba;
- r) Kuphela umgama ongohambo (oluholo lwetoni zeBomac ezi-2) kufuneka kusetyenziswe izixhobo zokugangatha kumphezulu oyimitha e-1 kwicala leekhebhuli zombane;

- s) Ukuba zingafumaneka iinkonzo ezingaphantsi komhlaba, kufuneka ke kucetyiswane nabe-CNC ngaphambi kokuba kuqaliswe ngawo nawuphina umsebenzi wolwakhwiwo.
- t) Akuvumelekanga ukuba kusetyenziswe iziko lokukhandela kumgama osi-3 m kwiintambo zombane eziyi- 11kV/LV zabakwa-Eskom .
- u) Isakheko esingundoqo esivulelekileyo asiyi kuchaphazeleka, nangona kunjalo, kufuneka kusetyenziswe inkathalo xa kuthe kwabonakala ukuba kukho ubungqina bokuba kukho uthungelwano loncedo oluvulelekile kwiziza ezi.

## **6 DISCUSSION/CONTENTS**

### **6.1 BACKGROUND:**

An application was received from Mrs Ariefa Sadeer, the owner of Erf 14944 Bellville, to lease a portion of the adjacent City owned land, being a portion of Erf 14930 Bellville, as indicated by the figure ABCD on Plan No TA 960v1 and attached as **Annexure A**. The property is to be used for garden and security purposes.

During the currency of the lease period the agreement of lease will contain a clause that, in the event that Council requires the land for the provision of basic municipal services, a notice period of two months will apply.

The property is registered in the name of City of Cape Town by D/T 68070 dated 2017-11-15. The property is zoned as Open Public Space 2: Public Open Space.

### **6.2 CONSULTATION WITH INTERNAL BRANCHES:**

The various Council Departments were consulted and have no objection to the lease subject to the conditions set out in paragraph 5 above.

### **6.3 VALUATION**

The application category fits within the tariff structure of the City approved on 27 May 2020.

An annual rental tariff of R1 096,52 excl. VAT and subject to increase in accordance with the City's tariff structure as approved by Council and as may be amended from time to time will be payable.

## **6.4 CONSTITUTIONAL AND POLICY IMPLICATIONS**

Chapter C of Council's policy relating to the Management of certain of the City of Cape Town's Immovable Property (approved 26 August 2010), permits the leasing of immovable property

## **6.5 FINANCIAL IMPLICATIONS**

All costs involved in this transaction will be for the Applicant's account.

## **6.6 TAX COMPLIANCE**

In terms of the City's Supply Chain Management Policy, approved by Council on 30 May 2019 (C18/05/19), paragraph 98.3 stipulates the City may not consider a bid or quote unless the bidder who submitted the bid or quote has submitted a valid tax clearance certificate certifying that the provider's tax matters are in order.

In terms of the City's Supply Chain Management Policy, approved by Council on 30 May 2019 (C18/05/19), paragraph 99 stipulates "Irrespective of the procurement process, the City may not make any award above R15 000,00 to a person whose tax matters have not been declared by the SARS to be in order."

Paragraphs 372 – 375 of the afore-mentioned policy deal with the sale and letting of City owned immovable property and are silent on the SARS requirement. Property Management adopted the principle as per paragraph 99 above and applicants need to submit a SARS clearance certificate or exemption certificate for the sale of all City owned immovable property. Except for tariff based rentals, which do not exceed R15 000,00 all applicants need to submit a SARS clearance or exemption certificate for the leasing of City owned immovable property.

This transaction is tariff based and does not exceed R15 000,00 and as such the requirements for a SARS clearance or exemption certificate is not applicable.

## **6.7 FINANCIAL DUE DILIGENCE**

The applicant's debt profile has been verified and it is confirmed that the debt profile is not in arrears.

## **6.8 SUSTAINABILITY IMPLICATIONS**

|   |  |                              |
|---|--|------------------------------|
| Does the activity in this report have any sustainability implications for the City? | No <input checked="" type="checkbox"/> | Yes <input type="checkbox"/> |
|---|--|------------------------------|

## **6.9      LEGAL IMPLICATIONS**

### **Regulation 36 of the MATR**

In terms of the above Regulation, Council must take into account a number of factors (highlighted in bold) when considering any proposed granting of rights to use, control or manage municipal capital assets, and it is herewith confirmed that:

#### **Whether asset may be required for the municipality's own use during the period for which the right is to be granted**

Council's service branches confirmed that the asset is not required for own purposes.

#### **Extent to which any compensation to be received, estimated value of improvements or enhancements to party the right is granted to will be required to make, economic or financial benefit to the City**

Council will receive a tariff rental to the amount of R1 096,52 per annum excluding VAT as calculated in accordance with the tariff structure.

#### **Management of Risk**

No operational or control risk to the City.

#### **Stakeholder comments and recommendations**

The Director: Property Management, in terms of her delegated powers, has approved the public participation process as required, resulting in the proposed lease being advertised in the Cape Argus and Die Burger on 7<sup>th</sup> June 2019 (bulk add) . Closing dates for objections were 7<sup>th</sup> July 2019. Copies of the advertisement were sent to the Ward Councillor, Manager and Chairperson of the relevant Sub-Council and registered local community organisations as well as to National and Provincial Treasury. No objections or comments were received.

#### **Views from National and Provincial Treasury**

In terms of Regulation 34 of the MATR the subject property falls within the category of a capital asset in respect of which the proposed right to be granted has a value less than R10 million and a period exceeding 3 years (Non-Significant Property Right). National and Provincial Treasury have been notified. No objections or comments were received.

#### **Strategic, Legal and Economic Interests**

None of these interests will be compromised through the granting of the right to use, control or manage the asset. In fact, they will be supported.

## **Compliance with Legislative Regime that is Applicable to Proposed Granting of Rights**

Granting of the right to use, control or manage the asset is compliant with the Municipal Finance Management Act, Municipal Asset Transfer Regulations and Council's policy on the management of certain of the City of Cape Town's immovable property.

### **6.10 STAFF IMPLICATIONS**

Does your report impact on staff resources, budget, grading, remuneration, allowances, designation, job description, location or your organisational structure?

No

Yes

## **ANNEXURES**

Annexure A: Plan No TA 960v1

**FOR FURTHER DETAILS CONTACT:**

|   |  |
|---|--|
| <b>NAME</b>   | MELISSA VAN DER WESTHUIZEN<br><i>Melissa</i>   |
| <b>CONTACT NUMBERS</b>                                    | 0214444977   |
| <b>E-MAIL ADDRESS</b>                                     | MELISSA.VANDERWESTHUIZEN@CAPE TOWN.GOV.ZA  |
| <b>DIRECTORATE</b>  | ECONOMIC OPPORTUNITIES & ASSET MANAGEMENT  |
| <b>FILE REF No</b>  | TYG 14/3/6/1/2/26450   |
| <b>MANAGER: PROPERTY HOLDING<br/>RACHEL SCHNACKENBERG</b> | Digitally signed by Rachel<br>Schnackenberg<br>Date: 2020.10.15 12:19:08 +02'00'<br>Rachel Schnackenberg<br>Digitally signed by Rachel<br>Schnackenberg<br>Date: 2020.10.15 12:19:08 +02'00' |

*Ruby Gelderbloem*  
 Digitally signed by  
 Ruby Gelderbloem  
 Date: 2020.10.16  
 15:38:45 +02'00'

Comment:

**DIRECTOR : PROPERTY MANAGEMENT IN HER CAPACITY AS EXECUTIVE DIRECTOR : ECONOMIC OPPORTUNITIES & ASSET MANAGEMENT NOMINEE**

NAME RUBY GELDERBLOEM

DATE \_\_\_\_\_

*g*  
 Jason Sam Digitally signed  
 by Jason Sam  
 Liebenberg Liebenberg  
 Date: 2020.10.20  
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REPORT COMPLIANT WITH THE PROVISIONS OF COUNCIL'S DELEGATIONS, POLICIES, BY-LAWS AND ALL LEGISLATION RELATING TO THE MATTER UNDER CONSIDERATION.

**LEGAL COMPLIANCE**

Non-Compliant

NAME \_\_\_\_\_

Comment:

TEL \_\_\_\_\_

Certified as legally compliant based on the contents of the report

DATE \_\_\_\_\_



## ANNEXURE A

