



#24821

REPORT TO SUBCOUNCIL 24

LC.22248

- 1 ITEM NUMBER : **24SUB 29/5/2019**
2. SUBJECT

PROPOSED LEASE OF CITY LAND, A PORTION OF STELLENBOSCH FARM 794, PORTION 38, OLD PAARDEVLEI ROAD, SOMERSET WEST: STELLENBOSCH HOSPICE T/A HEARTLANDS BABY SANCTUARY (NPO 165-422)

2. ONDERWERP

VOORGESTELDE VERHURING VAN STADSGROND, 'N GEDEELTE VAN STELLENBOSCHPLAAS 794, GEDEELTE 38, OU PAARDEVLEIWEG, SOMERSET-WES: STELLENBOSCH HOSPICE H.A. HEARTLANDS BABY SANCTUARY (NPO 165-422)

2. ISIHLOKO

ISIPHAKAMISO SOKUQESHISWA KOMHLABA WESIXEKO, OSISIQEPHU SEFAMA YASE- STELLENBOSCH 794, ISIQEPHU-38, OLD PAARDEVLEI ROAD, SOMERSET WEST: KWABE-STELLENBOSCH HOSPICE T/A HEARTLANDS BABY SANCTUARY (NPO 165-422)

Translation Ref : K3341

Case ID: 130002173

H14/2/2/1/2/92/40

(Category 3)

3. DELEGATED AUTHORITY

- ☒ The report is for comment by Subcouncil to the competent authority in terms of Part 24, Delegation 10(1).
- ☒ In terms of delegation Part 27B paragraph 22 (8), 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:

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- 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 delegation lies with Director: Property Management.

4. EXECUTIVE SUMMARY

PURPOSE OF REPORT	To consider the application to lease city land portion 38 of Stellenbosch Farm 794, situated at Old Paardevlei Road, Somerset West to Stellenbosch Hospice t/a Heartlands Baby Sanctuary.		
Site extent	8106 m ²		
Submission date	04 May 2017		
Current zoning	Risk Industry		
Current usage	Social - Child and Youth Centre – Place of Safety and early childhood development for children from birth to six years old		
Proposed usage	Social - Child and Youth Centre – Place of Safety and early childhood development for children from birth to six years old		
TOD Assessment	Cat 1 – TOD N/A		x
	Based on the TOD (Transit Oriented Development) strategic screening of the proposed erf to be disposed of, the subject property was found to have no TOD potential (also known as Category 1 in terms of the TOD Land Disposal Assessment Process) and did not meet the minimum TOD criteria due to its size, lack of consolidation potential and/or locational characteristics relevant to the City's TOD Strategic Framework. (See Annexure C).		
	Potential Cat 2 & 3		
Property Management Comment on TOD Assessment	Deemed to have potential in terms of Key Objectives therefore a detailed assessment in terms of the TOD Land Disposal Assessment Process was requested.		
Internal circulation date	Date submitted to TDA:	31 August 2017	
Internal department comments	Date TDA Comment Received:	20 September 2019. Support application.	

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Internal department comments	No objections subject to certain conditions.		
Public participation outcome summary	Advertised in the Cape Argus and Die Burger on 20 April 2018. No comments or objections were received.		
WARD CLLR	NOTICE DATE	WARD	
Cllr V Isaacs	10 April 2018	109	
Viable	Yes	x	No
	Viable immovable property is deemed to be property that can be developed and function as a separate entity and can be registered as a separate entity by the Registrar of Deeds.		
Recommended decision	Approval	x	Refusal
Regulation 34(1) In-principle approval	Granted by Director: Property Management in terms of delegated authority prior to 5 January 2017		
Factors motivating recommendation:	<ul style="list-style-type: none"> • The leasing of the land will relieve Council of the maintenance burden. • Tariff related rental income will be generated. • Better utilization of City land. • The community will benefit from the use of the property. 		
Strategic intent	SFA 1 : an OPPORTUNITY City of Cape Town		
	Objective 1.5	Leverage the City's assets to drive economic growth and sustainable development	
	Programme 1.5(a)	City strategic assets investigation	
ODTP Alignment	Customer Centricity	Provision of a Child and Youth Care Centre – Place of Safety	

5. RECOMMENDATIONS FOR CONSIDERATION AND COMMENT BY THE RELEVANT SUBCOUNCIL

It is recommended that the lease of land, portion 38 of Stellenbosch Farm 794, situated at Old Paardevlei Road, Somerset West, shown lettered ABCDEFGHJKLM on the attached sketch ET 544 marked annexure A, in extent approximately 8106 m², to Stellenbosch Hospice t/a Heartlands Baby Sanctuary, or their successors in title, be approved subject to inter alia the following conditions, that:

- a) A tariff rental of R883,48 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, with an option to renew for a further ten years;
- c) The rental will be adjusted annually in terms of the rental tariff structure as approved by Council;

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- d) The property be used for social (Child and Youth Centre – Place of Safety and early childhood development for children from birth to six years old) 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.

5. AANBEVELINGS VIR OORWEGING EN KOMMENTAAR DEUR DIE BETROKKE SUBRAAD

Daar word aanbeveel dat die verhuring vangrond, gedeelte 38 van Stellenboschplaas 794, geleë uit Ou Paardevleiweg, Somerset-Wes, met die letters ABCDEFGHJKLM aangetoon op die aangehegte skets ET 544, gemerk bylae A, ongeveer 8 106 m² groot, aan Stellenbosch Hospice h.a. Heartlands Baby Sanctuary, of hulle regsopvolgers, goedgekeur word onderworpe onder meer aan die volgende voorwaardes dat:

- a) 'n Tariefhuurbedrag van R883,48 per jaar, BTW uitgesluit bereken teen die koers van toepassing ten tye van die transaksie, betaalbaar is. Eiendomsbelasting nie van toepassing nie;
- b) Die huurooreenkoms vir 'n tydperk van tien jaar sal geld met die opsie om dit vir 'n verdere tien jaar te hernu;
- c) Die huurbedrag jaarliks aangepas sal word volgens die huurtariefstruktuur soos deur die Raad goedgekeur;
- d) Die eiendom slegs gebruik word vir maatskaplike doeleindes (kinder- en jeugsentrum – plek van veiligheid en vroeëkindontwikkeling vir kinders van geboorte tot ses jaar oud);
- 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 verbetering aan die eiendom nie;

5. IZINDULULO UKUBA ZIQWALASELWE KWAYE KUVAKALISWE ULUVO LIBHUNGANA ELIFANELEKILEYO

Kundululwe ukuba makuphunyezwe uqeshiso komhlaba, isiqephu-38 seFama yase-Stellenbosch engu-794, ese-Old Paardevlei Road, e-Somerset West,

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esibonakaliswe ngoonobumba abakhulu u-ABCDEFGHJKLM kwiplani eqhotyoshelweyo engu-ET 544 ephawulwe kwisihlomelo-A, esibukhulu obumalunga nama-8106 m², kwabe-Stellenbosch Hospice t/a Heartlands Baby Sanctuary, okanye kwabangena ezihlangwini zabo ngokwetayitile, ngokuxhomekeke ekuthotyelweni kwale miqathango ilandelayo, yokuba:

- a) Makuhlawulwe ixabiso lerenti elingama-R883,48 ngonyaka (ngaphandle kweRhafu-ntengo) elibalwe ngexabiso elijoliswe kwixesha elo lonaniselwano. liRhafu zokuhlala azihlawulwa;
- b) Uqeshiso luyakuthi luqhubekeke isithuba seminyaka elishumi kubekho nommiselo wokuhlaziywa eminye iminyaka elishumi;
- c) Irenti iyakuthi ilungelelaniswe rhoqo ngonyaka ngokwesakheko samaxabiso serenti njengoko siphunyezwe liBhunga;
- d) Ipropati le mayisetyenziselwe ezentlalo (iZiko labantwana noLutsha – iNdawo elungiselelwe kuphela imibandela yezoKhuselo nophuculo labantwana abaselula ngokujoliswe kubantwana ukususela ekuzalweni ukuya kwiminyaka emithandathu ubudala);
- e) Ngokuxhomekeke kweminye imiqathango eyakuthi inyanzeliswe nguMlawuli woLawulo lwePropati esebenzisa amagunya akhe awagunyaziselweyo;
- f) Ngokuxhomekeke ekuthotyelweni kwayo nayiphina imimiselo engeminye yomthetho;
- g) Akukho mbuyekezo iyakuthi ihlawulwe ngalo naluphina uphuculo oluthe lwenziwa kwipropati.

6. DISCUSSION/CONTENTS

6.1 BACKGROUND:

An application was received for the lease of City land, portion 38 of Stellenbosch Farm 794, situated at Old Paardevlei Road, Somerset West, shown lettered ABCDEFGHJKLM on the attached sketch ET 544 marked annexure A, in extent approximately 8106 m², from Stellenbosch Hospice t/a Heartlands Baby Sanctuary (applicant) or their successors in title for the lease of the aforementioned property for social (child and youth care centre – place of safety) purposes for a period of ten (10) years with an option to renew for a further period of ten (10) years.

The Applicant has been in occupation since October 1998 and has maintained it to the satisfaction of the City of Cape Town and meets all the requirements in terms of 12.5.1 of 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) as discussed in 6.4.2 of the report.

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The application has been circulated and is supported by all the relevant services branches subject to certain conditions as provided in paragraph 6.2 of the report.

As part of the public participation process a call for comments or alternative proposals in terms of Clause 12.5 of the Policy on the Management of certain of the City of Cape Town's Immovable Property was advertised. Alternative proposals were called for and no comments or any further feedback was received.

6.2 CONSULTATION WITH BRANCHES:

The various Council Departments were consulted and have no objection subject to the following conditions that will form part of the lease agreement:

- 6.2.1 A signage application shall be required should a signage be envisioned with a square area greater than 0.2 m²;
- 6.2.2 The premises must comply with the National Building Regulations and By-Law Relating to Community Fire Safety, and any other pertinent regulations;
- 6.2.3 That future road widening and projects are not affected and that the rules and regulations of the road are being adhered to at all times.

6.3 VALUATION

- 6.3.1 The application category fits within the tariff structure of the City approved on 30 May 2018.
- 6.3.2 An annual rental tariff of R883,48 excluding VAT calculated at the rate applicable at the time of transaction be payable, 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

- 6.4.1 The proposal complies with Section 14 of the Municipal Finance Management Act No.56 of 2003 in that the relevant branches of Council have confirmed that the city land is not required for the provision of the minimum level of a basic municipal service.
- 6.4.2 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.

Paragraph 12.5.1. of the Policy is quoted, as follows:

Social care properties / Community sport properties

In exceptional circumstances where a Property, to be used for a social care / community sport purposes, has not been reserved in accordance with the

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processes provided for in Chapter C of this policy, and where the City's Property Management Department receives an unsolicited application for Property Transaction, then the following factors may be taken into account in justifying not following a competitive bidding process-

Whether the applicant has historically enjoyed a Property Right granted by the City and, if so, how long;

The applicant is currently still in occupation of the said city land since December 2012. They submitted an application to enter into a lease agreement with the City of Cape Town for a period of ten (10) years with an option to renew for a further period of 10 years.

The terms and conditions of such lease;

A lease for a period of ten years with an option to renew for a further ten years at a rental of R883,48 per annum excluding VAT as well as rates and taxes, if applicable.

The exact nature of the social care or community purposes;

The property will be utilized for social (Child and Youth Centre – Place of Safety and early childhood development for children from birth to six years old) purposes only.

Whether the applicant in the past made improvements to the property and, if so, the value of such improvements;

During a site inspection on the premises, it was confirmed that permanent structures were erected on the property by the applicant. It cannot be determined what the value of the structures are, but it is well maintained brick and mortar structures.

Whether or not the City is satisfied with the manner in which the applicant gives effect to the social care or community purpose;

The City is satisfied that the property will be used by the local community and will have beneficial advantages for both the City and the community.

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 29 March 2017 (C22/03/17), paragraph 92.3 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.

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In terms of the City's Supply Chain Management Policy, approved by Council on 29 March 2017 (C22/03/17), paragraph 93 stipulates "Irrespective of the procurement process, the City may not make any award above R15 000,00 to a person who's 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 93 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.

6.7 FINANCIAL DUE DILIGENCE

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

6.8 SUSTAINABILITY IMPLICATIONS

Does the activity in this report have any sustainability implications for the City? No ☒ Yes ☐

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 financial benefit in the form of a tariff rental to the amount of R883,48 per annum excluding VAT calculated at the rate applicable at the time of transaction be payable. Rates not applicable.

Management of Risk

No operational or control risk to the City.

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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 Times and Die Burger on 20 April 2018. Closing dates for objections were 21 May 2018. Copies of the advertisement were sent to the Ward Councillor, Manager and Chairperson of the relevant Sub-Council and registered local community and organisations. No objections or alternative proposals 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 response was 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 Lease

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 ET 544

Annexure B: Certificate of Registration as Non-Profit Organization

Annexure C: Comments received from TDA

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FOR FURTHER DETAILS CONTACT:

NAME	ELEANOR ARENDS
CONTACT NUMBERS	021 444 5871
E-MAIL ADDRESS	ELEANOR.ARENDS@CAPETOWN.GOV.ZA
DIRECTORATE	ECONOMIC OPPORTUNITIES AND ASSET MANAGEMENT
FILE REF No	H14/2/2/1/2/92/40
MANAGER : PROPERTY HOLDING RACHEL SCHNACKENBERG	Schnackenberg 13-03-2019

J Gelderbloem
**DIRECTOR : PROPERTY MANAGEMENT IN HER
 CAPACITY AS EXECUTIVE DIRECTOR : ECONOMIC
 OPPORTUNITIES AND ASSET MANAGEMENT
 NOMINEE**

NAME RUBY GELDERBLOEM

DATE 2019-03-01/19

Comment:

Supported
 Zoning consent was
 to be checked / rezoning
 required.

Patricia Davis
LEGAL COMPLIANCE

☒ REPORT COMPLIANT WITH THE PROVISIONS OF
 COUNCIL'S DELEGATIONS, POLICIES, BY-LAWS
 AND ALL LEGISLATION RELATING TO THE MATTER
 UNDER CONSIDERATION.

☐ NON-COMPLIANT

NAME Patricia Davis
 TEL (021) 400-1549
 DATE 28.03.2019

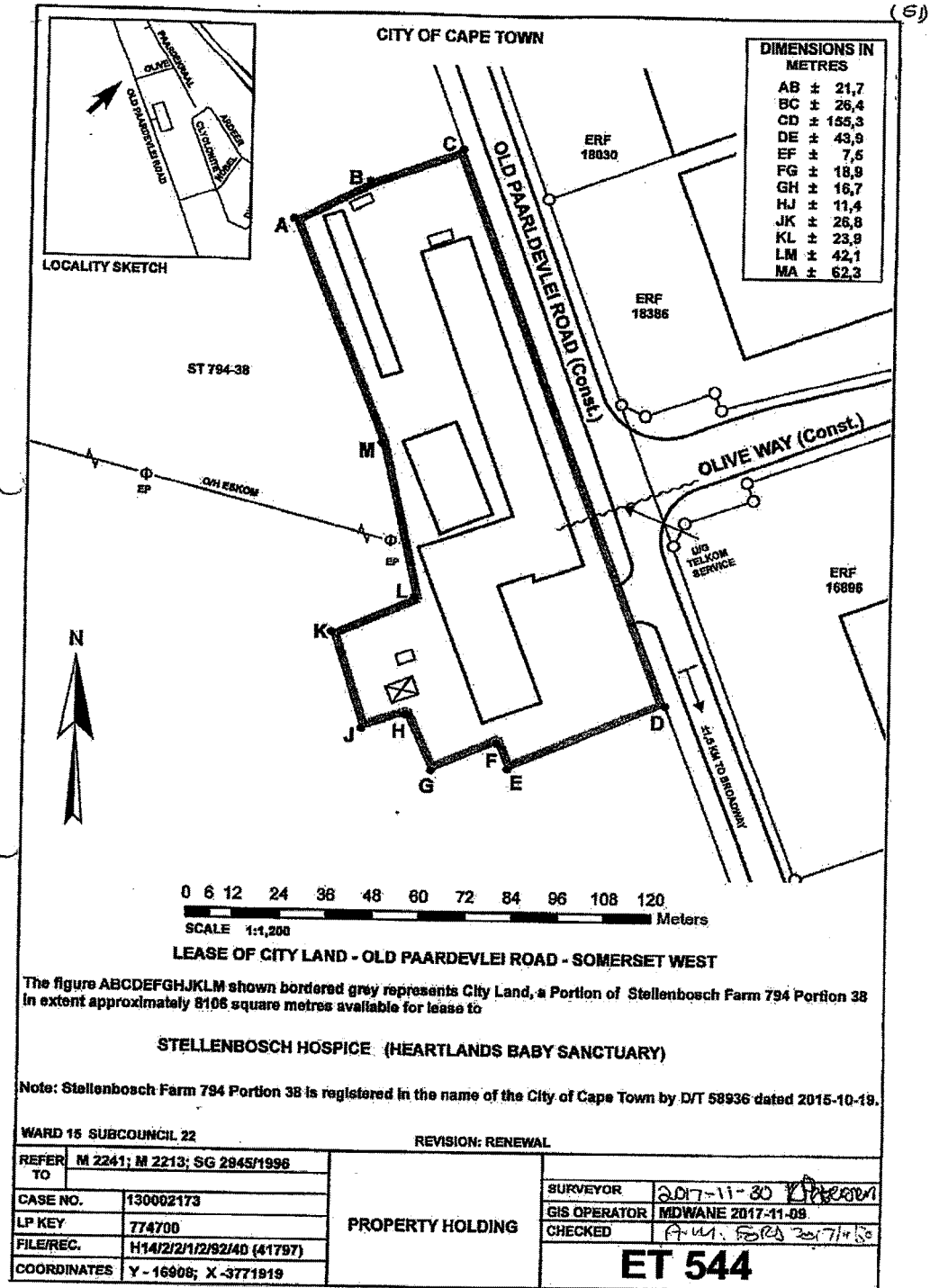
Comment:

Certified as legally compliant:

Based on the contents of the report.

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Annexure A



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Annexure B

GP-S.012-0120



**CERTIFICATE OF REGISTRATION OF
NONPROFIT ORGANIZATION**

In terms of the Nonprofit Organisation Act, 1997, I am satisfied that

Heartlands Baby Sanctuary

(name of the organisation)

meets the requirements for registration.

The organisation's name was entered into the register on **01 February 2016**
(date)

Registration number **165-422 NPO**

Director's signature

Department of Social



Development

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Annexure C

H/4/2/21/2/92/40

F
(43-A)



TDA
CAPE TOWN

The City of Cape Town, Transport
and Urban Development Authority
OOSTENBERG
KUILS RIVER REGISTRY

20 SEP 2017

URBAN PLANNING & MECHANISMS
URBAN INTEGRATION
URBAN INVESTMENT & DEVELOPMENT PORTFOLIO

LUTZ DE WET
Professional Officer

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E: borend.dewet@capetown.gov.za

Date: 2017-09-13
To: Property Management Department
Attention: Yanga Pika
Subject: Proposed renewal of lease agreement of Portion 38 of Stellenbosch Farm 794, to Heartlands Baby Sanctuary, for a period of 10 years

The City of Cape Town is considering the renewal of a 10 year lease agreement for Portion 38 (refer to Figure 1) of Stellenbosch Farm 794 – Old Paardevlei road, Somerset West, approximately 8106m² in extent to Stellenbosch Hospice (Heartlands Baby Sanctuary) for social purposes. The lease agreement that is under consideration is for a 10 year lease period.

Urban Planning and Mechanisms liaised with Sustainable Urban Management, and propose that the lease agreement should be shortened from a 10 year lease period to a 5 year lease period, with a one year notice clause. This decision is due to the property being situated on the Paardevlei developable area that is City owned, which is currently the subject of a development framework exercise to formulate a development vision for the area.

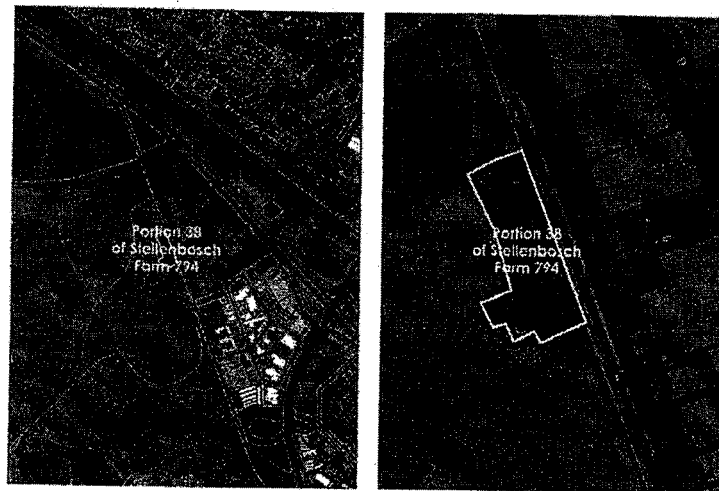


Figure 1: Structuring elements of Stellenbosch Farm, Portion 38 of Farm 794.

Civic Centre
12 Hertzog Boulevard, Cape Town, 8001
PO Box X9181, Cape Town, 8000

Iziko Izolwili
12 Hertzog Boulevard, Cape Town, 8001
PO Box X9181, Cape Town, 8000

Burgersentrum
Hertzog-boulevard 12, Koopstad, 8001
Postbus X9181, Koopstad, 8000

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Based on a TOD (transit oriented development) strategic screening of the portion proposed to be leased, the subject property is found to have no TOD potential with regards to the next 5 years IPTN proposal and due to the lack of access to future and existing high order public transport services and existing public facilities. However, this may change given the outcome of the development framework exercise.

To this end the application for the lease of the property for a 5 year period – with a one year notice clause, is supported.

Lutz de Wet for **Urban Planning and Mechanisms; Urban Integration Branch**
Urban Investment and Development Portfolio
TDA

Civic Centre
 12 Hertzog Boulevard, Cape Town, 8001
 PO Box X9181, Cape Town, 8000

Iziko Izoluntu
 12 Hertzog Boulevard, Cape Town, 8001
 PO Box X9181, Cape Town, 8000

Burgersentrum
 Hertzog-boulevard 12, Kaapstad, 8001
 Posbus X9181, Kaapstad, 8000

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