

ITEM NUMBER: C 10/05/16

RECOMMENDATION FROM THE EXECUTIVE MAYOR: 03 MAY 2016

MC 07/05/16 ACQUISITIVE PRESCRIPTIVE CLAIM OVER A PORTION OF PUBLIC STREET ABUTTING ERF 2795, CAPE TOWN, SITUATED ON THE CORNER OF WALE AND BUITENGRACHT STREETS, CAPE TOWN: BEEKAY 122 INVESTMENTS (PROPRIETARY) LIMITED

It is **RECOMMENDED** that, based on the evidence submitted by the Claimant, Council in terms of the provisions of Clause 5 of the City of Cape Town: Immovable Property By-law, 2015, read with Section 1 of the Prescription (Local Authorities) Ordinance No. 16 of 1964, admit and concede to the Prescriptive Claim over a portion of Public Street abutting Erf 2795, Cape Town situated on the corner of Wale and Buitengracht Streets, Cape Town, measuring in extent approximately 70m², as depicted by the figure ABCDEFGH on Plan STC 827/3 attached as Annexure A to the report on the agenda, in favour of Beekay 122 Investments (Proprietary) Limited.



REPORT TO COUNCIL

DATE 2016-05-03

1. ITEM NUMBER : MC 07/05/16

2. SUBJECT

ACQUISITIVE PRESCRIPTIVE CLAIM OVER A PORTION OF PUBLIC STREET ABUTTING ERF 2795 CAPE TOWN, SITUATED ON THE CORNER OF WALE AND BUITENGRACHT STREETS, CAPE TOWN: BEEKAY 122 INVESTMENTS (PROPRIETARY) LIMITED

2. ONDERWERP

VERKRYGENDE VERJARINGSEIS OOR 'N GEDEELTE VAN DIE OPENBARE PAD AANGRENSEND AAN ERF 2795 KAAPSTAD, GELEË OP DIE HOEK VAN WAAL- EN BUITENGRACHTSTRAAT, KAAPSTAD: BEEKAY 122 INVESTMENTS (EIENDOMS) BEPERK

2. ISIHLOKO

UBANGO LOKUHLUTHA IZIQEPHU ZESITRATO SOLUNTU ESIMELENE NESIZA- 2795 ESISEKAPA, KWIKONA YE-WALE NE-BUITENGRACHT STREETS, EKAPA: LWABE-BEEKAY 122 INVESTMENTS (PROPRIETARY) LIMITED

(LSU: G4914)
14/3/8/3/10/00/2795
PH2016/0111 (Category 1)

3. STRATEGIC INTENT

SFA 1: an OPPORTUNITY CITY

Objective 1.5	Leverage the City's assets to drive economic growth and sustainable development
Programme 1.5(a)	City strategic assets investigation

4. PURPOSE

To recommend that Council admit and concede to the Acquisitive Prescriptive Claim over a portion of Public Street abutting Erf 2795 Cape Town, situated on the corner of Wale and Buitengracht Streets, Cape Town in favour of Beekay 122 Investments (Proprietary) Limited.

5. FOR DECISION BY COUNCIL

- This report is for noting only/information only.
- This report is for consideration/decision by:
- The Executive Mayor together with the Mayoral Committee
 - Council

6. EXECUTIVE SUMMARY

PURPOSE OF REPORT	To recommend that Council admit and concede to the Acquisitive Prescriptive Claim over a portion of Public Street abutting Erf 2795 Cape Town, situated on the corner of Wale and Buitengracht Streets, Cape Town in favour of Beekay 122 Investments (Proprietary) Limited			
Property description	A portion of Public Street abutting Erf 2795 Cape Town.			
Applicant	Beekay 122 Investments (Proprietary) Limited			
Site extent	±70m ²			
Current zoning	Public Street			
Current usage	Building Encroachment claimed by prescription			
Proposed usage	To regularise the building encroachment			
Application description	Acquisitive Prescriptive claim			
Submission date	22 September 2010			
Circulation date	Not applicable			
Comments	Initial evidence submitted by the claimant was inconclusive. Substantive evidence was only verified during November 2015.			
Public participation outcome summary	Not applicable due to the nature of the claim.			
WARD Cllr	Not applicable	Date	Ward	

7. RECOMMENDATIONS

Not delegated: for decision by Council:

It is recommended that:

- 7.1 Based on the evidence submitted by the Claimant, Council in terms of the provisions of Clause 5 of the City of Cape Town: Immovable Property By-law, 2015, read with Section 1 of the Prescription (Local Authorities) Ordinance No 16 of 1964, admit and concede to the Prescriptive Claim over a portion of Public Street abutting Erf 2795 Cape Town situated on the corner of Wale and Buitengracht Streets, Cape Town measuring in extent approximately 70 m² as depicted by the figure ABCDEFGH on the attached

plan STC 827/3 marked annexure A, in favour of Beekay 122 Investments (Proprietary) Limited.

7. AANBEVELINGS

Nie gedelegeer nie: vir besluitneming deur die Raad:

Daar word aanbeveel dat:

7.1 Op grond van die bewyse wat deur die Eiser voorgelê is, die Raad ingevolge die bepalings van klousule 5 van die Stad Kaapstad: Verordening op Onroerende Eiendom, 2015, saamgelees met artikel 1 van die Ordonnansie op Verjaring (Plaaslike Owerhede), no. 16 van 1964, die verkrygende verjaringseis oor 'n gedeelte van die openbare pad aangrensend aan erf 2795 Kaapstad geleë op die hoek van Waal- en Buitengrachtstraat, Kaapstad ongeveer 70 m² groot, soos uitgebeeld deur figuur ABCDEFGH op die aangehegte plan STC 827/3 gemerk bylae A, ten gunste van Beekay 122 Investments (Eiendoms) Beperk, erken en toegee.

7. IZINDULULO

Asigunyaziswanga: isiqqibo seseBhunga:

Kundululwe ukuba:

7.1 Ngokubhekiselele kubungqina obungeniswe nguMbangi, iBhunga ngokwemimiselo yeSoloty-5 loMthetho kaMasipala weSixeko saseKapa ongeePropati ezingenakususwa wango-2015, ofundeka kunye necandelo-1 lweNkcazelo (ooGunyaziwe bendawo) uMmiselo ongunomb.16 wango-1964, wamkela kwaye uvumelana noBango lokuhluthwa kwesiqephu seSitrato soluntu esimelene nesiza-2795 esiseKapa esikwikona ye-Wale ne-Buitengracht Streets, eKapa, esibukhulu obumalunga nama-70 m² njengoko kubonakalisiwe kumzobo ongu-ABCDEFGH kwiplani eqhotyoshelweyo engu-STC 827/3 ephawulwe kwisihlomelo-A, abangabakwa-Beekay 122 Investments (Proprietary) Limited.

8. DISCUSSION/CONTENTS

Acquiring ownership over movable or immovable property by Prescription under South African Law is regulated by the Prescription Act of 1969. It generally provides that if a person has possessed a property openly, as if he/she were the owner thereof, for an uninterrupted period of thirty years, he/she has acquired ownership thereof by Prescription.

Clause 5 of the City of Cape Town: Immovable Property By-Law provides that if a person has, by prescription, acquired ownership of immovable property owned by the City, such prescription may be conceded by the City if written proof is produced to the effect that such prescription occurred 10 years prior to the expiration of the period contemplated in section 1 of the Prescription (Local Authorities) Ordinance, 1964 (Ordinance 16 of 1964) or 10 years prior to the expiration of the period contemplated in Section 3 of the State Land Disposal Act 48 of 1961.

Having regard to the provisions of the Prescription (Local Authorities) Ordinance, 1964 (Ordinance 16 of 1964), a claimant will have to submit proof that ownership was acquired by prescription prior to 7 August 1944.

The subject claimant, Beekay 122 Investments (Proprietary) Limited is the current registered owner of Erf 2795 Cape Town situated on the corner of Wale and Buitengracht Streets, Cape Town. Their buildings are encroaching over the public street abutting their property, which encroached area is now being claimed by prescription. To this end, Beekay 122 Investments (Proprietary) Limited has submitted the following documentation in support of their claim:

- a) A sworn Affidavit by Roderick Lewis, a Professional Land Surveyor in terms of which he confirms that the encroachments existed prior to 1944. (See annexure B).
- b) A Certificate of Expert Opinion by Peter Guise, a Senior Photogrammetrist confirming that encroachments was in existence in 1935. (See annexure C)

It is confirmed that officials in the Property Management Department has verified all the documents and evidence submitted by the claimant and that no evidence could be found to rebut the claim.

8.1. Constitutional and Policy Implications

Clause 5 of the City of Cape Town: Immovable Property By-Law provides that if a person has, by prescription, acquired ownership of immovable property owned by the City, such prescription may be conceded by the City if written proof is produced to the effect that such prescription occurred 10 years prior to the expiration of the period contemplated in section 1 of the Prescription (Local Authorities) Ordinance, 1964 (Ordinance 16 of 1964) or 10 years prior to the expiration of the period contemplated in Section 3 of the State Land Disposal Act 48 of 1961.

Sustainability Implications

Does the activity in this report have any sustainability implications for the City?

No

Yes

8.1.2 The proposal will have no negative impact on the natural environment.

8.2. Legal Implications

The claimant must ensure registration of the subject land into his name at his own cost.

8.3. Staff Implications

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

No

Yes

8.4. Risk Implications

None

8.5. Other Services Consulted

Not applicable due to the nature of the claim

ANNEXURES

- A – Sketch Plan 827/3
- B – Sworn Affidavit
- C – Certificate of expert opinion.

FOR FURTHER DETAILS CONTACT:

NAME	Johan de Goede (Saul Jacobs)
CONTACT NUMBERS	021 400 6419
E-MAIL ADDRESS	Saul.jacobs@capetown.gov.za
DIRECTORATE	FINANCE
FILE REF NO	14/3/8/3/10/00/2795
MANAGER : PROPERTY HOLDING	Kluwackerberg 2016.04.05

Jederaven
 DIRECTOR : PROPERTY MANAGEMENT IN
 HER CAPACITY AS CFO NOMINEE

Comment:

NAME RUBY GELDERBLOEM

DATE 2016-04-05

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 CHARLYNNE ARENOSE

TEL 021 400 1265

DATE 07/04/2016

Comment:

Certified as legally compliant:

Based on the contents of the report.

A. G. R.

EXECUTIVE DIRECTOR: CORPORATE SERVICES AND COMPLIANCE (ED: CORC)

SUPPORTED FOR ONWARD SUBMISSION TO MAYOR / MAYCO / COUNCIL

NOT SUPPORTED
 REFERRED BACK

DATE 12/4/16

COMMENT:



MAYORAL COMMITTEE MEMBER

COMMENT:

NAME ALD IAN NEILSON

DATE 14/4/2016