

ITEM NUMBER: C 51/05/16

**RECOMMENDATION FROM THE EXECUTIVE MAYOR: 17 MAY 2016**

**MC 40/05/16 GRANTING OF IN-PRINCIPLE APPROVAL: PROPOSED GRANTING OF RIGHT TO USE, CONTROL OR MANAGE MUNICIPAL CAPITAL ASSETS: RIGHT OF WAY SERVITUDE OVER CITY-OWNED IMMOVABLE PROPERTY BEING A PORTION OF ERF 192, ROGGEBAAI SITUATED ON CHRISTIAAN BARNARD STREET, CAPE TOWN IN FAVOUR OF ERF 164070, CAPE TOWN**

It is **RECOMMENDED** that:

- (a) Council resolve in terms of Section 14 of the Local Government Municipal Finance Management Act, Act 56 of 2003, that the property is not required to provide the minimum level of basic municipal services
- (b) Council in terms of Regulation 5 of the Municipal Asset Transfer Regulations grant in-principle approval that a Right of Way Servitude over a portion of Erf 192, Roggebaai, a Public Street situated on Christiaan Barnard Street, Cape Town shown lettered ABCDEFGHJKLM on Plan SZC 1388 attached as Annexure A to the report on the agenda, in extent approximately 998 m<sup>2</sup>, be granted in favour of Erf 164070, Cape Town, subject *inter alia* to the following conditions, that:
  - (i) the Right a Way Servitude shall be used for the construction of ramps and a tunnel underneath Christiaan Barnard Street into the basement parking;
  - (ii) access shall be points AM and exit through points DE as indicated on Plan SZC 1388 attached as Annexure A to the report on the agenda;
  - (iii) a permission agreement must be entered into between Council and the developer to cover the future maintenance of the access ramps and tunnel;
  - (iv) civil construction drawings (including details showing how existing services are to be protected during construction) for the structural, road works and associated services must be submitted by a Professional Engineer to and approved by the Director: Roads and Stormwater prior to commencing on site and is subject to the approval of the rezoning application for the proposed Culemborg Development;

- (v) a traffic accommodation plan must be provided for the construction phase which must be approved by the Director: Roads and Stormwater in conjunction with input from Director: Transport;
- (vi) any alterations or deviations to electricity services as a consequence of the proposal, or requested by the applicant, will be carried out at the applicant's cost;
- (vii) a way-leave and work permit must be obtained for the Electricity Department, before any excavation work may commence on site;
- (viii) the Department of Transport and Public Works has to approve any construction in the road reserve in terms of Section 17 of Ordinance 19 of 1976;
- (ix) a landscape plan to the specifications of the City's Departments of Environmental and Heritage Management, and Spatial Planning and Urban Design must be approved prior to registration of the subject Right of Way Servitude;
- (x) rates and municipal charges, if applicable, be levied;
- (xi) subject to such further conditions to be imposed by the Director: Property Management in terms of her delegated authority, including that all incidental costs will be borne by the grantee.

IPAC 17/04/2016

GRANTING OF IN PRINCIPLE APPROVAL: PROPOSED GRANTING OF RIGHT TO USE, CONTROL OR MANAGE MUNICIPAL CAPITAL ASSETS: RIGHT OF WAY SERVITUDE OVER CITY-OWNED IMMOVABLE PROPERTY BEING A PORTION OF ERF 192 ROGGEBAAI SITUATED ON CHRISTIAAN BARNARD STREET, CAPE TOWN IN FAVOUR OF ERF 164070 CAPE TOWN

MC 40/05/16

TOEKENNING VAN BEGINSSELGOEDKEURING: VOORGESTELDE TOEKENNING VAN REG VIR DIE GEBRUIK, BEHEER OF BESTUUR VAN MUNISIPALE KAPITAALBATES: DEURGANGSREG-SERWITUUT OOR ONROERENDE EIENDOM IN STADSBESIT, SYNDE 'N GEDEELTE VAN ERF 192 ROGGEBAAI GELEË AAN CHRISTIAAN BARNARDSTRAAT, KAAPSTAD TEN GUNSTE VAN ERF 164070 KAAPSTAD

UKUNIKEZELWA KWESIPHUMEZO: ISIPHAKAMISO SOKUNIKEZELWA KWELUNGELO LOKUSETYENZISWA, UKUPHATHA OKANYE ULAWULO LWEEMPAHLA EZINKULU ZIKAMASIPALA: ILUNGELO LOKUNGENA KWIPROPATI ENGENAKUSUSWA EPHANTSI KWESIXEKO ESISIQEPHU SESIZA-192 ESISE-ROGGEBAAI ESIKWI-CHRISTIAAN BARNARD STREET, EKAPA, NGOKUNXAMNYE NESIZA-164070 ESISEKAPA

*Property Management representative was present to answer any question for clarity*

#### RECOMMENDATIONS

Not delegated: for decision by Council:

It is recommended that:

- a) Council resolve in terms of section 14 of the Local Government Municipal Finance Management Act, Act 56 of 2003, that the property is not required to provide the minimum level of basic municipal services.
- b) Council in terms of Regulation 5 of the Municipal Asset Transfer Regulations grant in - principle approval that a Right of Way Servitude over a portion of Erf 192 Roggebaai, a Public Street situated on Christiaan Barnard Street, Cape Town shown lettered ABCDEFGHJKLM on the attached plan SZC 1388 marked annexure A, in extent approximately 998m<sup>2</sup>, be granted in favour of Erf 164070 Cape Town subject inter alia to the following conditions:
  - i. The Right a Way Servitude shall be used for the construction of ramps and a tunnel underneath Christiaan Barnard Street into the basement parking.
  - ii. Access shall be points AM and exit through points DE as indicated on plan SZC 1388.
  - iii. A permission agreement must be entered into between Council and the developer to cover the future maintenance of the access ramps and tunnel.
  - iv. Civil construction drawings (including details showing how existing services are to be protected during construction) for the structural, road works and associated services must be submitted by a Professional Engineer to and approved by the Director of Roads

and Stormwater prior to commencing on site and is subject to the approval of the rezoning application for the proposed Culemborg Development.

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- v. A traffic accommodation plan must be provided for the construction phase which must be approved by the Director: Roads and Stormwater in conjunction with input from Director: Transport.
- vi. Any alterations or deviations to electricity services as a consequence of the proposal, or requested by the applicant, will be carried out at the applicant's cost.
- vii. A way-leave and work permit must be obtained for the Electricity Department, before any excavation work may commence on site.
- viii. The Department of Transport and Public Works has to approve any construction in the road reserve in terms of Section 17 of Ordinance 19 of 1976.
- ix. A landscape plan to the specifications of the City's Departments of Environmental and Heritage Management, and Spatial Planning and Urban Design must be approved prior to registration of the subject Right of Way Servitude.
- x. That rates and municipal charges, if applicable, be levied.
- xi. Subject to such further conditions to be imposed by the Director: Property Management in terms of her delegated authority, including that all incidental costs will be borne by the grantee.

## AANBEVELINGS

Nie gedelegeer nie: vir besluitneming deur die Raad:

Daar word aanbeveel dat:

- a) Die Raad ingevolge artikel 14 van die Wet op Plaaslike Regering: Munisipale Finansiële Bestuur, no. 56 van 2003, besluit dat die eiendom nie vir die voorsiening van die minimum vlak van basiese munisipale dienste benodig word nie.
- b) Die Raad ingevolge regulasie 5 van die regulasies oor die oordrag van munisipale bates beginselgoedkeuring verleen vir die toekenning van 'n deurgangsreg-serwituut oor 'n gedeelte van erf 192 Roggebaai, 'n openbare straat geleë aan Christiaan Barnardstraat, Kaapstad, aangetoon deur die letters ABCDEFGHJKLM op die aangehegte plan SZC 1388 gemerk bylae A, ongeveer 998 m<sup>2</sup> groot, ten gunste van erf 164070 Kaapstad, onderworpe aan onder meer die volgende voorwaardes:
  - i. Die serwituut van deurgangsreg gebruik sal word vir die bou van op/afritte en 'n tunnel onderdeur Christiaan Barnardstraat na die ondergrondse parkering.
  - ii. Toegang via punte AM en uitgang via punte DE, soos aangetoon op plan SZC 1388, sal wees.
  - iii. Die Raad en die ontwikkelaar 'n toestemmingsooreenkoms moet aangaan om die toekomstige instandhouding van die op/afritte en tunnel te dek.

- iv. Boukundige tekenir (begrip van details wat aantoon hoe bestaande dienste tydens konstruksiewerk beskerm gaan word) vir die strukturele, padwerke en verbandhoudende dienste deur 'n professionele ingenieur aan die direkteur paaie en stormwater vir goedkeuring voorgelê moet word voordat werk op die terrein begin en onderworpe sal wees aan die goedkeuring van die hersoneringsaansoek vir die voorgename Culemborg-ontwikkeling.
- v. 'n Plan om verkeer tydens die konstruksiefase te akkommodeer deur die direkteur: paaie en stormwater, met insette van die direkteur: vervoer, goedgekeur moet word.
- vi. Enige wysigings aan elektrisiteitsdienste wat as gevolg van die voorstel nodig is, of wat deur die aansoeker versoek word, ten koste van die aansoeker uitgevoer sal word.
- vii. 'n Serwituut van deurgang en werkspermit vanaf die elektrisiteitsdepartement verkry moet word voordat daar met uitgrawings op die terrein begin word.
- viii. Die departement van vervoer en openbare werke enige konstruksie in die padreserwe ingevolge artikel 17 van Ordonnansie 19 van 1976 moet goedkeur.
- ix. 'n Landskapplan wat voldoen aan die spesifikasies van die stad se departemente omgewing- en erfenisbestuur en ruimtelike beplanning en stedelike ontwerp goedgekeur moet word vóór die registrasie van die tersaaklike serwituut van deurgangsreg.
- x. Eiendomsbelasting en munisipale tariewe, indien van toepassing, gehief sal word.
- xi. Onderworpe aan enige verdere voorwaardes opgelê deur die direkteur: eiendomsbestuur in die uitvoering van haar gedelegeerde bevoegdheid, insluitend dat alle bykoste deur die persoon aan wie die reg toegeken word, gedra sal word.

## IZINDULULO

Asigunyaziswanga: isigqibo seseBhunga:

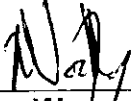
Kundululwe ukuba:

- a) IBhunga ligqibe ngokwecandelo-14 loMthetho wobuRhulumente boMmandla ongoMthetho woLawulo lweziMali zikaMasipala ongunomb.56 wango-2003, ukuba ipropati ayifuneki nganto ukubonelela ngomlinganiselo othile weenkonzozingundoqo zikamasipala.
- b) IBhunga ngokoMgaqo-5 weMigaqo engokuTshintshelwa kweMpahla kaMasipala, linikezela isiphumezo seLungelo lokungena kwisiqephu sesiza-192 esise-Roggebaai, i-Public Street esikwi-Christiaan Barnard Street, eKapa, esibonakaliswe ngoonobumba abakhulu u-ABCDEFGHIJKLM kwiplani eqhotyoshelweyo engu-SZC 1388 ephawulwe kwisihlomelo-A, esibukhulu obumalunga nama-998 m<sup>2</sup>, malinikezelwe ngokunxamnye nesiza-164070 esiseKapa, ngokuxhomekeke, phakathi kwezinye izinto, ekuthotyelweni kwale miqathango ilandelayo:
  - i. Ilungelo lokungena kufuneka lisetyenziselwe ukwakhiwa kwamathambeka netonela ngaphantsi kwe- Christiaan Barnard Street ukuya kwindawo yokupaka ekumgangatho osisiseko.

- ii. Indawo yokungena kubonakalisa i-zeziindawo ezingu-AM neyokuphuma ijolise kwiindawo-DE njengoko kubonakalisiwe kwiplani engu-SZC 1388.
- iii. Isivumelwano semvume kufuneka kungenwe kuso phakathi kweBhunga nomphuhlisi ukukhawulelana nonophelo lwexesha elizayo lwamathambeka okungena netonela.
- iv. Imizobo yezobunjineli bolwakhiwo (kuquka iinkcukacha ezibonakalisa indlela yokukhuselwa kweenkonzo ezisele zimiselwe ngexesha lolwakhiwo) ngokujoliswe kwimisebenzi yesakheko, indlela neenkonzo ezinxulumene noko, kufuneka zingeniswe yiNgcali yezoBunjineli kwakhona ziphunyezwe nguMlawuli weeNdlela naManzi esitshi ngaphanmbi kokuba kuqaliswe ngomsebenzi kwisiza kwakhona kuxhomekeke ekuphunyezweni kwesicelo somiselo ngokutsha/socando ngokutsha ngokujoliswe kwisiphakamiso soPhuhliso lwe-Culemborg.
- v. Kufuneka kubonelelwe ngesicwangciso sokuvumela abolawulo lwezithuthi ezindleleni ngokujoliswe kwisigaba solwakhiwo apho kufuneka ibonelelwe nguMlawuli weeNdlela naManzi esitshi ngokungqinelana noluvo loMlawulo wezoThutho.
- vi. Naluphina uguqulelo okanye utenxo kwiinkonzo zombane olufunekayo ngenxa yesiphakamiso, okanye ngenxa yokuba lucelwe ngumfaki-sicelo, luyakuthi luqhutywe ngokwendleko zomfaki-sicelo.
- vii. Kufuneka kufunyanwe ilungelo lokungena neyokusebenza kwiSebe lezoMbane phambi kokuba kuqaliswe nawuphina umsebenzi wokugrumba kwisiza.
- viii. ISebe lezoThutho neMisebenzi yoLuntu kufuneka liphumeze naluphina ulwakhiwo kwindlela yabucala, ngokungqinelana necandelo-17 loMmiselo ongunomb.19 wangowe-1976.
- ix. Isicwangciso/iplani engembonakalo-mhlaba apho ingokomgqaliselo wamaSebe eSixeko elokuSingqongileyo noLawulo lokuLilifa lemveli kunye neloCwangciso lwamaBala noYilo lweDolophu kufuneka siphunyeziwe phambi kobhaliso kwelungelo eli sele likhankanyiwe lokungena.
- x. Makuhlawulwe iirhafu neentlawulo zikamasipala, apho kufanelekileyo.
- xi. Ngokuxhomekeke kwimiqathango ethe xhaxhe eyakuthi inyanzeliswe nguMlawuli woLawulo lwePropati esebenzisa amagunya akhe awagunyaziselweyo, kuquka zonke iindleko eziphathelele noku, eziyakuthi zibeluxanduva lomthengi.

**ACTION: R SCHNACKENBERG; R GELDERBLOEM**

It is noted that this resolution is in line with Supply Chain Management Policy.



MR RICHARD WOOTTON  
EMPLOYEE NO: 10207948  
CHAIRPERSON : IMMOVABLE PROPERTY  
ADJUDICATION COMMITTEE

DATE: 2/4/16

COMMENT:

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DIRECTOR : LEGAL SERVICES (*Acting*)  
MR LUNGELU MBANDAZAYO *Sean Roman*

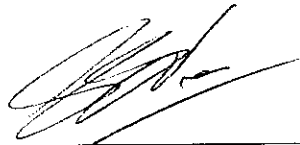
DATE: 28.04.2016

COMMENT:

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ALDERMAN IAN NEILSON  
MAYORAL COMMITTEE MEMBER : FINANCE

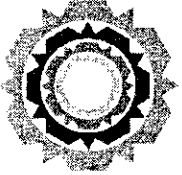
DATE: 3/5/16

COMMENT:

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CITY OF CAPE TOWN  
ISIXEKO SASEKAPA  
STAD KAAPSTAD

REPORT TO IMMOVABLE PROPERTY ADJUDICATION COMMITTEE

DATE

1. **ITEM NUMBER :** To be inserted by Executive Support

2. **SUBJECT**

**GRANTING OF IN PRINCIPLE APPROVAL: PROPOSED GRANTING OF RIGHT TO USE, CONTROL OR MANAGE MUNICIPAL CAPITAL ASSETS: RIGHT OF WAY SERVITUDE OVER CITY-OWNED IMMOVABLE PROPERTY BEING A PORTION OF ERF 192 ROGGEBAAI SITUATED ON CHRISTIAAN BARNARD STREET, CAPE TOWN IN FAVOUR OF ERF 164070 CAPE TOWN**

2. **ONDERWERP**

**TOEKENNING VAN BEGINSELGOEDKEURING: VOORGESTELDE TOEKENNING VAN REG VIR DIE GEBRUIK, BEHEER OF BESTUUR VAN MUNISIPALE KAPITAALBATES: DEURGANGSREG-SERWITUUT OOR ONROERENDE EIENDOM IN STADSBESIT, SYNDE 'N GEDEELTE VAN ERF 192 ROGGEBAAI GELEË AAN CHRISTIAAN BARNARDSTRAAT, KAAPSTAD TEN GUNSTE VAN ERF 164070 KAAPSTAD**

2. **ISIHLOKO**

**UKUNIKEZELWA KWESIPHUMEZO: ISIPHAKAMISO SOKUNIKEZELWA KWELUNGELO LOKUSETYENZISWA, UKUPHATHA OKANYE ULAWULO LWEEMPAHLA EZINKULU ZIKAMASIPALA: ILUNGLO LOKUNGENA KWIPROPATI ENGENAKUSUSWA EPHANTSI KWESIXEKO ESISIQEPHU SESIZA-192 ESISE-ROGGEBAAI ESIKWI-CHRISTIAAN BARNARD STREET, EKAPA, NGOKUNXAMNYE NESIZA-164070 ESISEKAPA**

(LSU: G4469)

CT14/3/4/165/00/164070

PH 2016/0092 (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   |

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#### 4. PURPOSE

The purpose of this report is to obtain the following from Council:

- An in principle approval in terms of Regulation 5 of the Municipal Asset Transfer Regulations for the proposed granting of a Right of Way Servitude over City owned immovable property being a portion of Erf 192 Roggebaai (Public Street), situated on Christiaan Barnard Street, Cape Town in favour of Erf 164070 Cape Town.
- Approval that the immovable property is not required for the provision of basic municipal services in terms of Section 14 of the Municipal Finance Management Act.

In terms of the provisions of the Municipal Finance Management Act (MFMA) and the associated Municipal Asset Transfer Regulations (MATR), the City may only dispose of viable property after (a) the City has made a determination that the asset is not required for the provision of basic municipal purposes and (b) approved in principle that the asset may be disposed of.

The MATR further stipulates that the City may not commence with the disposal process of negotiations unless approval in principle has been obtained. For reasons referred to in the report, this transaction relates to a direct deal and not a disposal via a tender process and the following have therefor already been addressed and further discussed in the body of the report:

- public participation
- valuation determination

The recommendations for final approval will be submitted to the Immoveable Property Adjudication Committee (IPAC) in terms of Part 42 of the System of Delegations. This IPAC report will include the comments obtained from subcouncil on the proposed disposal.

#### 5. FOR DECISION BY COUNCIL

- This report is for consideration by
- the Immoveable Property Adjudication Committee (IPAC)
  - the Executive Mayor together with the Mayoral Committee
  - Council

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## 6. EXECUTIVE SUMMARY

|                                      |  |            |         |    |
|--------------------------------------|--|------------|---------|----|
| PURPOSE OF REPORT                    | <p>The purpose of this report is to obtain the following from Council:</p> <ul style="list-style-type: none"> <li>• Approval that the immovable property is not required for the provision of basic municipal services in terms of Section 14 of the Municipal Finance Management Act.</li> <li>• An in principle approval in terms of Regulation 5 of the Municipal Asset Transfer Regulations for the proposed transfer of a Right of Way Servitude over City owned immovable property being a portion of Erf 192 Roggebaai (Public Street), situated on Christiaan Barnard Street, Cape Town in favour of Erf 164070 Cape Town</li> </ul> |            |         |    |
| Property description                 | Erf 192 Roggebaai (Public Street)  |            |         |    |
| Applicant's physical address         | Christiaan Barnard Street, Cape town   |            |         |    |
| Site extent                          | Culemborg Investment Properties Pty Ltd  |            |         |    |
| Current zoning                       | ±998m <sup>2</sup>   |            |         |    |
| Current usage                        | Public Street  |            |         |    |
| Proposed usage                       | Vacant with access point to applicant's property   |            |         |    |
| Application description              | Access to ramp for underground parking   |            |         |    |
| Submission date                      | Right of way Servitude to construct ramps and a tunnel underneath Christiaan Barnard Street to applicant's property  |            |         |    |
| Circulation date                     | 23 July 2010   |            |         |    |
| Comments                             | 31 January 2011  |            |         |    |
| Public participation outcome summary | The application was pended due to a substantial arrear municipal services account which the applicant has now settled  |            |         |    |
| WARD Cllr                            | NOTICE   | DATE       | WARD    |    |
| Elizabeth Brunette                   | Yes  | 11-03-2014 |         | 77 |
| Viable                               | Yes  |            | No      | X  |
| Recommended decision                 | Approval   | X          | Refusal |    |

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*EB*

## 7. RECOMMENDATIONS

Not delegated: for decision by Council:

It is recommended that:

- a) Council resolve in terms of section 14 of the Local Government Municipal Finance Management Act, Act 56 of 2003, that the property is not required to provide the minimum level of basic municipal services.
- b) Council in terms of Regulation 5 of the Municipal Asset Transfer Regulations grant in - principle approval that a Right of Way Servitude over a portion of Erf 192 Roggebaai, a Public Street situated on Christiaan Barnard Street, Cape Town shown lettered ABCDEFGHJKLM on the attached plan SZC 1388 marked annexure A, in extent approximately 998m<sup>2</sup>, be granted in favour of Erf 164070 Cape Town subject inter alia to the following conditions:
  - i. The Right a Way Servitude shall be used for the construction of ramps and a tunnel underneath Christiaan Barnard Street into the basement parking.
  - ii. Access shall be points AM and exit through points DE as indicated on plan SZC 1388.
  - iii. A permission agreement must be entered into between Council and the developer to cover the future maintenance of the access ramps and tunnel.
  - iv. Civil construction drawings (including details showing how existing services are to be protected during construction) for the structural, road works and associated services must be submitted by a Professional Engineer to and approved by the Director of Roads and Stormwater prior to work commencing on site and is subject to the approval of the rezoning application for the proposed Culemborg Development.
  - v. A traffic accommodation plan must be provided for the construction phase which must be approved by the Director: Roads and Stormwater in conjunction with input from Director: Transport.
  - vi. Any alterations or deviations to electricity services as a consequence of the proposal, or requested by the applicant, will be carried out at the applicant's cost.
  - vii. A way-leave and work permit must be obtained for the Electricity Department, before any excavation work may commence on site.

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- viii. The Department of Transport and Public Works has to approve any construction in the road reserve in terms of Section 17 of Ordinance 19 of 1976.
- ix. A landscape plan to the specifications of the City's Departments of Environmental and Heritage Management, and Spatial Planning and Urban Design must be approved prior to registration of the subject Right of Way Servitude.
- x. That rates and municipal charges, if applicable, be levied.
- xi. Subject to such further conditions to be imposed by the Director: Property Management in terms of her delegated authority, including that all incidental costs will be borne by the grantee.

## 7. AANBEVELINGS

Nie gedelegeer nie: vir besluitneming deur die Raad:

Daar word aanbeveel dat:

- a) Die Raad ingevolge artikel 14 van die Wet op Plaaslike Regering: Munisipale Finansiële Bestuur, no. 56 van 2003, besluit dat die eiendom nie vir die voorsiening van die minimum vlak van basiese munisipale dienste benodig word nie.
- b) Die Raad ingevolge regulasie 5 van die regulasies oor die oordrag van munisipale bates beginselgoedkeuring verleen vir die toekenning van 'n deurgangsreg-serwituut oor 'n gedeelte van erf 192 Roggebaai, 'n openbare straat geleë aan Christiaan Barnardstraat, Kaapstad, aangetoon deur die letters ABCDEFGHJKLM op die aangehegte plan SZC 1388 gemerk bylae A, ongeveer 998 m<sup>2</sup> groot, ten gunste van erf 164070 Kaapstad, onderworpe aan onder meer die volgende voorwaardes:
  - i. Die serwituut van deurgangsreg gebruik sal word vir die bou van op/afritte en 'n tunnel onderdeur Christiaan Barnardstraat na die ondergrondse parkering.
  - ii. Toegang via punte AM en uitgang via punte DE, soos aangetoon op plan SZC 1388, sal wees.
  - iii. Die Raad en die ontwikkelaar 'n toestemmingsooreenkoms moet aangaan om die toekomstige instandhouding van die op/afritte en tunnel te dek.

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- iv. Boukundige tekeninge (met inbegrip van details wat aantoon hoe bestaande dienste tydens konstruksiewerk beskerm gaan word) vir die strukturele, padwerke en verbandhoudende dienste deur 'n professionele ingenieur aan die direkteur paaie en stormwater vir goedkeuring voorgelê moet word voordat werk op die terrein begin en onderworpe sal wees aan die goedkeuring van die hersoneringsaansoek vir die voorgenome Culemborg-ontwikkeling.
- v. 'n Plan om verkeer tydens die konstruksiefase te akkommodeer deur die direkteur: paaie en stormwater, met insette van die direkteur: vervoer, goedgekeur moet word.
- vi. Enige wysigings aan elektrisiteitsdienste wat as gevolg van die voorstel nodig is, of wat deur die aansoeker versoek word, ten koste van die aansoeker uitgevoer sal word.
- vii. 'n Serwituut van deurgang en werkspermit vanaf die elektrisiteitsdepartement verkry moet word voordat daar met uitgrawings op die terrein begin word.
- viii. Die departement van vervoer en openbare werke enige konstruksie in die padreserwe ingevolge artikel 17 van Ordonnansie 19 van 1976 moet goedkeur.
- ix. 'n Landskapplan wat voldoen aan die spesifikasies van die stad se departemente omgewing- en erfenisbestuur en ruimtelike beplanning en stedelike ontwerp goedgekeur moet word vóór die registrasie van die tersaaklike serwituut van deurgangsreg.
- x. Eiendomsbelasting en munisipale tariewe, indien van toepassing, gehef sal word.
- xi. Onderworpe aan enige verdere voorwaardes opgelê deur die direkteur: eiendomsbestuur in die uitvoering van haar gedelegeerde bevoegdheid, insluitend dat alle bykoste deur die persoon aan wie die reg toegeken word, gedra sal word.

## 7. IZINDULULO

Asigunyaziswanga: isiqqibo seseBhunga:  
Kundululwe ukuba:

- a) IBhunga ligqibe ngokwecandelo-14 loMthetho wobuRhulumente boMmandla ongoMthetho woLawulo lweziMali zikaMasipala ongunomb.56 wango-2003, ukuba ipropati ayifuneki nganto ukubonelela ngomlinganiselo othile weenkonzozingundoqo zikamasipala.
- b) IBhunga ngokoMgaqo-5 weMigaqo engokuTshintshelwa kweMpahla kaMasipala, linikezela isiphumezo seLungelo lokungena kwisiqephu sesiza-

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*BA*

192 esise-Roggebaai, i-Public Street esikwi-Christiaan Barnard Street, eKapa, esibonakaliswe ngoonobumba abakhulu u-ABCDEFGHJKLM kwiplani eqhotyoshelweyo engu-SZC 1388 ephawulwe kwisihlomelo-A, esibukhulu obumalunga nama-998 m<sup>2</sup>, malinikezelwe ngokunxamnye nesiza-164070 esiseKapa, ngokuxhomekeke, phakathi kwezinye izinto, ekuthotyelweni kwale miqathango ilandelayo:

- i. Ilungelo lokungena kufuneka lisetyenziselwe ukwakhiwa kwamathambeka netonela ngaphantsi kwe- Christiaan Barnard Street ukuya kwindawo yokupaka ekumgangatho osisiseko.
- ii. Indawo yokungena kufuneka ibeziindawo ezingu-AM neyokuphuma ijolise kwiindawo-DE njengoko kubonakalisiwe kwiplani engu-SZC 1388.
- iii. Isivumelwano semvume kufuneka kungenwe kuso phakathi kweBhunga nomphuhlisi ukukhawulelana nonophelo lwexesha elizayo lwamathambeka okungena netonela.
- iv. Imizobo yezobunjinieli bolwakhiwo (kuquka iinkcukacha ezibonakalisa indlela yokukhuselwa kweenkonzo ezisele zimiselwe ngexesha liolwakhiwo) ngokujoliswe kwimisebenzi yesakheko, indlela neenkonzo ezinxulumene noko, kufuneka zingeniswe yiNgcali yezoBunjinieli kwakhona ziphunyezwe nguMlawuli weeNdlela naManzi esitshi ngaphanmbi kokuba kuqaliswe ngomsebenzi kwisiza kwakhona kuxhomekeke ekuphunyezweni kwesicelo somiselo ngokutsha/socando ngokutsha ngokujoliswe kwisiphakamiso soPhuhliso lwe-Culemborg.
- v. Kufuneka kubonelelwe ngesicwangciso sokuvumela abolawulo lwezithuthi ezindleleni ngokujoliswe kwisigaba solwakhiwo apho kufuneka ibonelelwe nguMlawuli weeNdlela naManzi esitshi ngokungqinelana noluvo loMlawulo wezoThutho.
- vi. Naluphina uguqulelo okanye utenxo kwiinkonzo zombane olufunekayo ngenxa yesiphakamiso, okanye ngenxa yokuba lucelwe ngumfaki-sicelo, luyakuthi luqhutywe ngokwendleko zomfaki-sicelo.
- vii. Kufuneka kufunyanwe ilungelo lokungena neyokusebenza kwiSebe lezoMbane phambi kokuba kuqaliswe nawuphina umsebenzi wokugrumba kwisiza.
- viii. ISebe lezoThutho neMisebenzi yoLuntu kufuneka liphumeze naluphina ulwakhiwo kwindlela yabucala, ngokungqinelana necandelo-17 loMmiselo ongunomb.19 wangowe-1976.
- ix. Isicwangciso/iplani engembonakalo-mhlaba apho ingokomgqaliselo wamaSebe eSixeko elokuSingqongileyo noLawulo lokuLilifa lemveli kunye neloCwangciso lwamaBala noYilo ,lweDolophu kufuneka siphunyeziwe phambi kobhaliso kwelungelo eli sele likhankanyiwe lokungena.

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- x. Makuhlawulwe iirhafu neentlawulo zikamasipala, apho kufanelekileyo.
- xi. Ngokuxhomekeke kwimiqathango ethe xhaxhe eyakuthi inyanzeliswe nguMlawuli woLawulo lwePropati esebenzisa amagunya akhe awagunyaziselweyo, kuquka zonke iindleko eziphathelene noku, eziyakuthi zibeluxanduva lomthengi.

## 8. DISCUSSION/CONTENTS

### 8.1 BACKGROUND:

Application was made by Culemborg Investment Properties Pty Ltd, the lessee of portion of Erf 164070 Cape Town, to be granted right for way servitude over a portion of Erf 192 Roggebaai (Public Street) Street situated off Christiaan Barnard Street, Cape Town shown lettered ABCDEFGHJKLM on the attached plan SZC 1388 marked annexure A, in extent approximately 998m<sup>2</sup>.

The current zoning of the property is Public Street and is used vacant with an access point to the applicant's property.

Due to the nature of the right being disposed of the subject property it is regarded as being non-viable land which cannot be sold by public competition and only has value to the abutting landowner.

The subject application was circulated to all the relevant Branches for comment. No objections were raised by the Branches to the proposed closure and disposal of the subject property.

The proposed transfer of the right of way servitude was duly advertised in terms of the stipulations of the now repealed By-Law relating to the Management of the City of Cape Town's Immovable Property in two local newspapers on 7 March 2014, inviting the public to lodge written comments. A notice in this regard was also served on the relevant ward councillor and sub-council. No objections were received by the closing date to the advertisement.

The recommendation was considered by Sub-Council 16 on 15 February 2016 and it was unanimously resolved to support the recommendation to approve the application. The extract from the minutes of the sub-Council meeting is attached hereto marked Annexure B.

### 8.1 CONSULTATION WITH BRANCHES:

The application was circulated to the relevant branches of Council. The alienation of the property is supported subject to the following conditions:

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*[Handwritten signature]*

a) Environmental and Heritage Management:

- This branch must be provided with a plan showing all existing trees on the site that may be affected by this proposal. The actual tree canopies must be shown and the extent of works in relation to such canopies. If the trees are Milkwood trees, please note that they are protected in terms of the National Forestry Act and a permit may be required from Department of Agriculture, Forestry and Fisheries.

b) Roads and Stormwater:

- A permission agreement must be entered into between Council and the developer to cover the future maintenance of the access ramps and tunnel.
- Civil construction drawings (include details showing how existing services are to be protected during construction) for the structural, road works and associated services must be submitted by a Professional Engineer to and approved by the Director of Roads and Stormwater prior to work commencing on site and is subject to the approval of the rezoning application for the proposed Culemborg Development.
- A traffic accommodation plan must be provided for the construction phase which must be approved by the Director: Roads and Stormwater in conjunction with input from Director: Transport.

c) Fire and Rescue Services:

- Immediate Emergency Vehicular access must be guaranteed.
- Fire hydrants, water pipes, hydrant indicating plates or decals must remain accessible at all times.

d) Electricity Services:

- Any alterations or deviations to electricity services as a consequence of the proposal, or requested by the applicant, will be carried out at the applicant's cost.
- A way-leave and work permit must be obtained for the Electricity Department, before any excavation work may commence on site. In this regard, please contact the Drawing Office Manager, Mr. D Smith on Tel. 021 506 3949.

e) Department of Transport and Public Works

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- This department has to approve any construction in the road reserve in terms of Section 17 of Ordinance 19 of 1976.

f) Spatial Planning and Urban Design

- All trees removed from the Christiaan Barnard Street centre island must be reinstalled/ replanted or new trees of similar type and size must be planted in Christiaan Barnard Street in the sections that will be closed for traffic so as to replace it in the traffic island space.
- The retained green open space along the ramps must be greened and supplemented with planters in pots so as to transplant some form of green/trees/height along this route. This process needs to be managed by the applicant's Landscape Architects under guidance of the City of Cape Town Landscape Architect. Discussions regarding this must be held prior to completion of approval. A landscape plan therefor has to be submitted to this department for approval prior to building consent.
- The retaining wall to the ramps needs to be softened or articulated in some form so as to create less of a blank wall (although for safety reasons we understand the need for it) i.e. greened/ some public art, etc. so as to create an feature within the space and contribute to this setting.
- The link from the new proposed development on the southern side of Christiaan Barnard Street should be linked (especially in terms of pedestrian access) along Louis Gardner towards the Artscape/founders Garden. This should form part of the landscape plan that have to be submitted to this department.
- Treatment of the street surface to reinforce this movement should be incorporated in the work done to allow for access to the basement (could be for example in the form of paving across the tarred services).

## 8.2 FACTORS MOTIVATING RECOMMENDATION:

- 8.2.1 Market related compensation in the amount of R1 500 000, excluding VAT, will accrue to the City.
- 8.2.2 Due to the nature of the right being disposed of the subject property cannot be sold by public competition and only has value to the abutting land owner.
- 8.2.3 No objections were received against the servitude over land.
- 8.2.4 The servitude will allow for better utilisation of the property.

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**8.3 PUBLIC PARTICIPATION**

|             |                            |                       |
|-------------|----------------------------|-----------------------|
| Advertising | Cape Times & Burger        | Date: 7 March 2014    |
|             | Prov & Nat Treasury        | Date: 7 March 2014    |
|             | Notices to adj owners      | Date: 7 March 2014    |
|             | Ward councillor            | Date: 11 March 2014   |
|             | Subcouncil Chair & Manager | Date: 11 March 2014   |
|             | Community organisation(s)  | None                  |
| Outcome     | Objections                 | None                  |
|             | Ward Councillor's support  | No objection received |

**8.4 VALUATION**

8.4.1 The application category does not fit within the tariff structure of the City approved on 29 May 2015;

8.4.2 The City's Professional Valuers on 31 July 2013 assessed the value of compensation payable at R1 500 000, excluding VAT (if applicable). A valuation synopsis is attached to the report as Annexure "C"

**8.5 VAT**

VAT will be levied at the standard rate.

**8.6 BLACK ECONOMIC EMPOWERMENT (BEE) STATUS**

The applicant is not from a previously disadvantaged group.

**8.7 CONSTITUTIONAL AND POLICY IMPLICATIONS**

8.7.1 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 land is not required for the provision of the minimum level of a basic municipal service.

8.7.2 The proposal complies with the provisions of Regulation 33(3) of Chapter 4 of the MATR in that the right to be granted is for an indefinite and undetermined period.

8.7.3 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 granting of property rights

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**8.8 FINANCIAL IMPLICATIONS**

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

**8.9 TAX COMPLIANCE**

In terms of the City's Supply Chain Management Policy, approved by Council on 31 July 2013, paragraph 85 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 359 - 361 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 85 above and applicants need to submit a SARS clearance or exemption certificate for the sale of all City owned immovable property.

The tax certificate submitted by the applicant has expired. A new tax clearance certificate will be requested before the matter is submitted to IPAC for final approval. No agreement will be concluded until a valid Tax Clearance Certificate is furnished.

**8.10 FINANCIAL DUE DILIGENCE**

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

**8.11 SUSTAINABILITY IMPLICATIONS**

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

**8.12 LEGAL IMPLICATIONS**

**Regulation 7 of the Municipal Asset Transfer Regulations (MATR)**

In terms of the above Regulation, Council must take into account a number of factors (highlighted in bold) when considering any proposed transfer or disposal of non-exempted capital assets:

**Whether the capital asset may be required for municipality's own use at a later date.**

This proposal complies with Section 14 of the Local Government Municipal Finance Management Act No. 56 of 2003 in that the relevant branches of Council have confirmed in writing that the asset is not needed to provide the minimum level of basic municipal services.

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**The expected loss or gain that is expected to result from the transfer or proposed disposal.**

The expected gain to result from the proposed transfer is fair market value and future rates and taxes.

**The extent to which any compensation to be received in respect of the proposed transfer or disposal will result in a significant economic or financial cost or benefit to municipality.**

Council will receive a financial benefit in the form of market related compensation as well as rates and taxes following the development of the property. The market value related compensation has been determined to be R1 500 000,00 excluding VAT.

**The risks and rewards associated with the operation or control of the capital asset that is to be transferred or disposed of in relation to the municipality's interests.**

No operational or control risk to the City.

**The effect that the proposed transfer or disposal will have on the credit rating of the municipality, its ability to raise long-term or short-term borrowings in the future and its financial position and cash flow.**

None.

**Any limitations and conditions attached to the capital asset or the transfer or disposal of the asset, and the consequences of any potential non-compliance with those conditions.**

The servitude agreement will contain terms and conditions as imposed by the Director: Property Management in terms of delegated authority.

**The estimated cost of the proposed transfer or disposal.**

The applicant will be responsible for costs of registration of the servitude agreement.

**The transfer of liabilities and reserve funds associated with the capital asset.**

No liabilities and reserve funds are associated with the capital asset.

**Any comments or representations on the proposed transfer or disposal received from the local community and other interested persons.**

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The Director : Property Management, in terms of her delegated powers, approved the public participation process as required, resulting in the proposed transfer being advertised in the Cape Times and Die Burger on 7 March 2014. Closing date for objections was 7 April 2014. Copies of the advertisement were sent to the Ward Councillor, Manager of the relevant Sub-Council. No objections were received.

**Any written views and recommendations on the proposed transfer or disposal by National Treasury and the relevant Provincial Treasury.**

The asset considered for disposal is not a "high value" asset, as defined in the MATR. No objections / comments were received from National and Provincial Treasury.

**The interests of any affected organ of state, the municipality's own strategic, legal and economic interests and the interests of the local community.**

None of these interests will be compromised as a result of the proposed granting of the servitude right; in fact, it will be supported.

**Compliance with legislative regime applicable to the proposed transfer or disposal.**

The proposal complies with the provisions of the Municipal Finance Management Act, 2003 (Act No. 56 of 2003) and the Municipal Asset Transfer Regulations published in Government Gazette No R. 878 dated 22 August 2008.

### 8.13 STAFF IMPLICATIONS

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

No

### ANNEXURES

- A – Plan SZC 1388
- B – Extract of Minute of SubCouncil meeting
- C – Valuation Synopsis

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FOR FURTHER DETAILS CONTACT:

|                           |   |
|---------------------------|---|
| NAME                      | Donavon Geysman (Saul Jacobs) <i>DC CFO</i> |
| CONTACT NUMBERS           | 021 400 6419                                |
| E-MAIL ADDRESS            | Saul.jacobs@capetown.gov.za                 |
| DIRECTORATE               | FINANCE                                     |
| FILE REF NO               | CT14/3/4/165/00/164070                      |
| MANAGER: PROPERTY HOLDING | <i>Helmachenberg</i>                        |

*Donavon Geysman*  
**DIRECTOR: PROPERTY MANAGEMENT IN  
 HER CAPACITY AS CFO NOMINEE**

Comment:

NAME RUBY GELDERBLOEM  
 DATE 2016-08-18

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 ARENDEK  
 TEL 021 400 1265  
 DATE 31/3/2016

Comment:

Certified as legally compliant:  
 Based on the contents of the report. *CA*