



## Attention;

**1. Mr Michael Brinkhuis**

Chief Executive Officer

Cape Agency for Sustainable Integrated Development in Rural Areas

Paarl

Michael Brinkhuis

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**2. Minister Alan Winde**

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**3. Minister Anton Bredell**

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**4. Patricia de Lille**

Executive Mayor

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**5. Helen Zille**

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20 April 2017

**Development of socio-economic agricultural plan for the Philippi Agricultural Area**

1. We refer to the tender the request for proposals for the development of a socio-economic agricultural plan for the Philippi Agricultural Area, published in the Weekend Argus of 8 April 2017, under tender number 1/2017 (RFP).
2. The PHA Food & Farming Campaign (PHA Campaign) is a voluntary association, which, in terms of its Constitution, has the following objectives:
  - a. to defend the ecological integrity of the Philippi Horticultural Area (“PHA”) as a unique, historical agricultural area and promote the sustainable use of the PHA’s natural resources;
  - b. to support the training, development and capacitation in the arena of food and farming;
  - c. to access information including information about sustainable agriculture, water use, law, rights, processes and adverse impacts on land in the PHA and to share and distribute that information;
  - d. to support and assist community-based organisations with a focus on the PHA with similar goals and objectives as the PHA FFC;
  - e. to engage all relevant roleplayers including government at local, provincial and national level, industry, civil society organisations, non-governmental organisations and the institutions created in terms of chapter 9 of the Constitution of the Republic of South Africa Act 108 of 1996;
  - f. advocate for and promote the progressive realisation of the right to food;
  - g. advocate for and promote market reform to protect consumers and farmers with a specific emphasis on emerging farmers; and
  - h. tackle agrarian and land reform issues in the small-scale farming area to support a broader land reform model.
3. As you would no doubt know, the PHA Campaign has vehemently been campaigning against inappropriate urban and industrial development, illegal waste disposal and mining in the PHA. Much of the PHA Campaign’s work has attracted significant media attention, especially its opposition to the proposed Oaklands City and UVEST Developments in the PHA.
4. The RFP comes as a complete surprise to us. As an active and well-known organisation operating in the PHA, we would have expected to at least have been consulted on the formulation of the terms of reference of the RFP.
5. For the reasons we shall set out in this letter, we submit that the terms of reference of the RFP are inappropriate and obscure, rendering the bid process and the study that may well result from the bid process fatally flawed. **We therefore call on the Cape Agency for Sustainable Integrated Development in Rural Areas (Casidra) to rescind the RFP with immediate effect.**
6. At the outset, we point out that it is curious that a state-owned corporation set up for the development of agriculture is commissioning a study on the industrial and urban development of prime agricultural land. There is a distinct absence of factors pertaining to the mandate of Casidra and the Western Cape Department of Agriculture, which includes climate change and food security. The RFP appears to focus on the “economic development” (and more specifically industrial and urban development) in the PHA. The title is therefore misleading.
7. The RTP furthermore does set the policy or legislative context for the tender process. It is therefore not clear what the real purpose of commissioning the study is.

#### **The purpose of the proposed study**

8. It is not clear to us why a “socio-economic agricultural plan for the PHA” is being commissioned by Casidra. There is already a plethora of literature on agriculture in the PHA, which includes The Rooftop Study (Battersby-Leonard), PHA Rapid Review (City of Cape Town), 2009, “The Role of the PHA in Securing the Future of the City” (EESP), 2012 and the “Food System and Food Security Study for the City of Cape Town” (Battersby-Leonard), 2015. We submit that it is fruitless and wasteful to commission yet another study on the PHA, especially when two of the aforementioned studies have not been adequately considered by the council of the City of Cape Town or provincial government.
9. Furthermore, it would appear to us from the RTP that the study is geared towards justifying the “mixed development” of the PHA – in other words, to justify decisions taken at provincial and municipal level to authorise urban and industrial development in the PHA. The study is geared towards collecting information that would justify a change in land use and not objective, impartial information. For example, the imperative to “look at” unlocking economic development in economic sectors other than agriculture in the PHA and transforming land to “mixed use” will inevitably lead to conclusion that PHA needs to be earmarked for urban and industrial development. The outcome of the study is therefore clearly a foregone conclusion that the PHA must be used for industrial and urban development. The Minister of Agriculture, Forestry and Fishers (Minister) has on two occasions explicitly stated in letters to the City of Cape Town that the PHA must be preserved from agricultural purposes for him to deliver on his mandate to ensure food security in the greater City of Cape Town.
10. Our argument that the outcome of the study is pre-ordained is mirrored by the frustration expressed by city planners during the original deliberations on PHA development: *“The extent to which the information is disputed relates in our view to the extent to which members of MAYCO consider the information presented by the applicant, with a clear interest in collecting information supportive of motivating for the development of their land to be of greater weight or bearing to that presented by the independent specialists, as well as the extent to which the expertise of officials is not trusted. This is a difficult matter for officials to address.”*
11. It would also seem that the study has been commissioned to obviate the use of other more transparent, participative policy and legislative tools to assess the agricultural potential and sensitivities of the PHA, such as a strategic environmental assessment provided for in the National Environmental Management Act, 1998. There is no guarantee that the successful tenderer will consult with all relevant stakeholders and ensure their participation in the study. Consequently, it would be difficult to hold Casidra and the tenderer to account.
12. We furthermore have reason to believe that the Western Cape Provincial authorities are unwilling to engage with us about the development pressure being placed in the PHA. We have on at least four occasions invited the Member of the Executive Council responsible for agriculture in the Western Cape, Minister Winde, to engage with us about the protection of the prime agricultural land in the PHA, but he has failed to do so.

### **Circumventing co-operative governance**

13. While we understand that “agriculture” is a shared national and provincial competence, we submit that the commissioned study may well have the object of defeating the initiatives taken by the Department of Agriculture, Forestry and Fisheries (DAFF) to protect prime agricultural land such as the land found in the PHA. DAFF has for instance published a draft bill on the Preservation and Development of Agricultural Land for public comment. As you know, that draft

bill makes provision for the protection of prime agricultural land from urban and industrial development. As we have already argued, due to the way that the RFP has been termed, it is inevitable that it will advocate for urban and industrial development in the PHA. Also, given that the RFP includes elements of spatial planning, it is disturbing that there is no reference to the Spatial Planning and Land use Management Act, 2013 and its principles and objects.

14. There is also no reference in the RTP to the fact the PHA has been found by Western Cape Heritage to be one of exceptional heritage value. It is unclear whether or not Western Cape Heritage has been consulted.
15. The RFP makes reference to “a shared partnership by the three tiers of government,” but it does not appear that DAFF will actively participate or at least be consulted in the process. Casidra and the Western Cape Department of Agriculture is effectively dictating the terms of the envisaged so-called “shared partnership.” The reference to the “shared partnership” is therefore in our opinion also misleading and calculated as an answer to allegations of a failure of co-operative governance.
16. We submit that a more collaborative approach with at least DAFF, the City of Cape Town and Western Cape Heritage would have been more appropriate.

#### **No provision for broad meaningful public participation in the RTP**

17. The stakeholders referred to in the RFP are the three tiers of government, established farmers and “other businesses.” The RFP does not explicitly and implicitly require the successful tenderer to ensure the participation of farm workers, emerging farmers, land claimants, the recipients of land claims, disadvantaged communities, conservation groups and organisations concerned with food insecurity in the greater City of Cape Town in the study.

#### **The tender process may well not be lawful**

18. As a disclaimer to this section, we do not wish to put in a proposal for the study. We will however make the allegation that the RFP does not comply with section 217 of the Constitution of the Republic of South Africa, 1996 and may well therefore result in a disgruntled unsuccessful tenderer to approach the High Court to have the tender award set aside on review. We therefore reiterate our call for the tender to be cancelled with immediate effect.
19. We submit that the RFP does not allow for sufficient time for the submission of proposals, the terms of reference are vague and no scoping procedure was followed.

#### Not sufficient time to prepare and submit proposals

20. As already mentioned, the RFP was published in the Weekend Argus on 8 April 2017. In terms of the advertisement, proposals must be submitted to Casidra by 12h00 on 20 April 2017, or within 12 days, of which only 6 were business days.
21. The Supply Chain Management Guide, 2004 (Guide), the preparation time for tender may generally not be less than 30 days from the date of invitation to bid and for large works, this period should generally be not less than twelve weeks.

#### The policy context of the RFP is obscure

22. We have already pointed out that the policy context of the tender is not clear as it does not refer to any legislation, policy or departmental mandate.
23. In the Guide, it is stated that tenders must only be put out when services are necessary for the fulfilment of need as part of a strategic objective of an organ of state and that it should determine the optimum method to fulfil that need. As there is no policy context referenced, it is difficult to determine whether or not there is indeed a need for the commissioning of the study.

#### No scoping process followed

24. As already pointed out, the advertisement comes as a complete surprise to us. As far as we know, there was no pre-bid meeting or an expression of interest. It therefore precluded any scoping input from the communities and organisations concerned with the preservation of the agricultural land in the PHA. The process was therefore not transparent and does not comply with the requirement in section 217 of the Constitution that procurement is transparent.

#### **Tender process**

25. Please advise us of the date and time the tender bids will be opened. We reserve our rights to be present at the opening of the bids.

#### **Conclusion**

26. In conclusion, owing to the foregoing fatal flaws in the RFP, we call on Casidra to rescind the tender with immediate effect.
27. The PHA lost two large pieces of its border in the last 5 years - to the Schaapkraal smallholdings and the Weltevreden Wedge. In a country that has only 14 million hectares of arable land left, the further deletion of unique and irreplaceable arable land that is the breadbasket of the city is untenable. To get a Department responsible for agriculture to commission a study on industrial and urban development in the PHA is scandalous.

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