



CITY OF CAPE TOWN
ISIXEKO SASEKAPA
STAD KAAPSTAD

SUBCOUNCIL 24
SUBRAAD 24
IBHUNGA 24
Acknowledges Receipt
Erken Ontvangs
Isiqinisekiso sokufumaneka

Date/Datum/Urnhlal: 03/12/2018

Signature/Handtekening/Utyikityo: B. Mamba

LC 21520

REPORT TO SUBCOUNCIL 24

1. ITEM NUMBER 24SUB 8/1/2019

2. SUBJECT

PROPOSED LEASE OF A PORTION OF PUBLIC STREET, PORTION OF ERF 625 ADJACENT ERF 728, CHURCH STREET, SOMERSET WEST: KATHARINE AMBROSE

2. ONDERWERP

VOORGESTELDE VERHURING VAN 'N OPENBARE PLEK, GEDEELTE VAN ERF 625, AANGRENSENDE ERF 728, KERKSTRAAT, SOMERSET-WES: KATHARINE AMBROSE

2. ISIHLOKO

ISIPHAKAMISO SENGQESHISO NGESIQEPHU SESITALATO SOLUNTU, ISIQEPHU SESIZA 625 ESIMELENE NESIZA 728, CHURCH STREET, SOMERSET WEST: KUKATHARINE AMBROSE

K2125

Case ID: 130001393

H14/3/6/1/2/202

(Category 4)

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:

- 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.

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- 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 proposed lease of a portion of public street, erf 625 adjacent erf 728, Church Street, Somerset West to Katharine Ambrose for gardening purposes.			
Site extent	119 m ²			
Submission date	16 January 2017			
Current zoning	Public Street			
Current usage	Gardening			
Proposed usage	Gardening			
TOD Assessment	Cat 1 – TOD N/A	X	Cat 1	
Property Management Comment on TOD Assessment	N/A. Leases are not required to undergo the Comprehensive TOD Assessment. All properties with an extent > 5000 m ² and with a lease period of more than 5 years have been circulated to the Urban Planning and Mechanism Branch for comment as part of the normal MATR process			
Internal circulation date	17 August 2017			
Internal department comments	No objections subject to certain conditions.			
Public participation outcome summary	Advertised in the Cape Argus and Die Burger on 25 May 2018. No objections were received.			
WARD CLLR	NOTICE DATE			WARD
Cllr Goodman Lulamile Rorwana	25 July 2018			84
Viable	Yes		No	x
	Non-Viable immovable property is property that owing to urban planning, physical constraints or extent cannot be developed on its own or function as a separate entity and can therefore only become functional if alienated or leased to an adjoining owner for usage in conjunction with the said owner's property.			
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			

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Factors motivating recommendation:	<ul style="list-style-type: none"> • The leasing of the property will relieve Council of the maintenance burden. • Better utilization of City property. • Improved safety and security. 	
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	N/A

5. RECOMMENDATIONS FOR CONSIDERATION AND COMMENT BY THE RELEVANT SUBCOUNCIL

It is recommended that the lease of portion of public street, being a portion of erf 625, adjacent erf 728, Church Street, Somerset West, shown hatched and lettered ABCD on the attached sketch ET632 marked annexure A, in extent approximately 119 m², to Katharine Ambrose, owner of Erf 728 or her successors in title, be approved subject to inter alia the following conditions, that:

- a) A tariff rental of R835.65 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;
- d) The property be used for gardening 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 van 'n openbare straat, naamlik 'n gedeelte van erf 625, aangrensende erf 728, Kerkstraat, Somerset-Wes, aangetoon deur arsering en die letters ABCD op die aangehegte skets ET632 gemerk bylae A, ongeveer 119 m² groot, aan Katherine Ambrose, eienaar van erf 728 of haar regsopvolgers, goedgekeur word, onderworpe aan onder andere die volgende voorwaardes, naamlik dat:

- a) 'n Tariefhuurgeld van R835,65 per jaar, BTW uitgesluit - bereken teen die koers wat ten tye van die transaksie geld - betaal moet word. Eiendomsbelasting is nie van toepassing nie;
- b) Die huurtermyn tien jaar sal wees met 'n opsie om vir 'n verdere tien jaar te hernu;
- c) Die huurgeld jaarliks aangepas sal word volgens die huurtariefstruktuur deur die Raad goedgekeur;
- d) Die eiendom slegs vir tuinmaakdoeleindes gebruik mag word;
- e) Onderworpe aan enige verdere voorwaardes opgelê deur die direkteur: eiendomsbestuur ingevolge haar gedelegeerde bevoegdheid;
- f) Onderworpe aan die nakoming van enige ander statutêre vereistes;
- g) Geen vergoeding betaal sal word vir enige verbetering wat aan die eiendom aangebring word nie.

5. IZINDULULO ZOKUBA ZIQWALASELWE KWAYE KUHLONYULWE KUZO LIBHUNGANA ELIFANELEKILEYO

Kundululwe ukuba makuphunyezwe ingqeshiso yesiqephu sesitalato soluntu, esisiqephu sesiza-625, esimelene nesiza-728 esime eChurch Street, Somerset West, esibonakaliswe ngemigca ekrweliweyo noonobumba ABCD kwisazobe esingu-ET632 esiqhotyoshelweyo nesiphawulwe njengesihlomelo A, esibukhulu bumalunga ne-119 m², kuKatharine Ambrose, okanye abangena ezihlangwini zakhe ngokwetaytile, ngokuxhomekeke phakathi kwezinye izinto kule miqathango ilandelayo, yokuba:

- a) Makuhlawulwe ixabiso lerenti elingama-R835.65 ngonyaka ngaphandle kweRhafu-ntengo ebalwe ngokwexabiso elisetyenziswayo ngexesha lonaniselwano. lintlawulo zobuhlali azisebenzi;
- b) Inggqeshiso iyakuthi iqhubekeke isithuba seminyaka elishumi kukho ummiselo wokuzikhethela ukuhlaziya eminye iminyaka elishumi;

- c) Ixabiso lerenti liyakuthi lilungelelaniswe rhoqo ngonyaka ngokungqinelana nesakheko samaxabiso njengoko siphunyezwe liBhunga;
- d) Ukuba ipropati iya kusetyenziselwa imibandela yezolimo kuphela;
- e) Ngokuxhomekeke kweminye imiqathango eyongeziweyo eya kumiselwa nguMlawuli: woLawulo lwePropati esebenzisa amagunya akhe awagunyaziselweyo;
- f) Ngokuxhomekeke ekuthotyelweni kwayo nayiphina imimiselo yomthetho engeminye;
- g) Akukho mbuyekezo iyakuthi yenziwe ngalo naluphina uphuculo oluthe lwenziwa kwipropati.

6. DISCUSSION/CONTENTS

6.1 BACKGROUND:

An application was received for the lease of a portion of public street, erf 625 adjacent erf 728, situated at Church Street, Somerset West, shown hatched and lettered ABCD on the attached sketch ET 632 marked annexure A, in extent approximately 119 m², to Katharine Ambrose, or her successors in title for the lease of the aforementioned property for garden purposes.

The Applicant previously entered into a lease agreement with the City of Cape Town in respect of said city property, commencing August 2005. The lease has since expired and the lease continued on a month to month basis. The applicant has maintained the subject property to the satisfaction of the City of Cape Town.

The Applicant submitted an application to enter into a new 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 property is non-viable. 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.

The proposed lease was advertised for public comment and or objections. No comments or any further feedback was received.

6.2 CONSULTATION WITH BRANCHES:

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

- 6.2.1 No mechanical plant or vibrator type compactors may be used within three meters of any Telkom Plant (I.E. any Telecommunication equipment above or below ground level).

- 6.2.2 A written request must be submitted to Telkom for consideration, should the applicant wish to relocate our plant. The cost of such a relocation will be recoverable from the applicant.
- 6.2.3 It is the responsibility of the applicant to verify the existence of the indicated plant and to notify Telkom immediately, should the applicant locate any Telkom Plant which is not indicated on the plans.
- 6.2.4 Should the applicant expose any Telkom plant, the safeguard thereof will be the applicant's full responsibility.
- 6.2.5 Failing to comply with above conditions or any special conditions will be regarded as gross negligence and the applicant will be held responsible for any damage or loss as result thereof.

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 R835.65 excl. VAT 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 property 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.

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.



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.

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 ☒ 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 R835.65 per annum excluding VAT calculated at the rate applicable at the time of transaction be payable, as well as rates and taxes, if applicable.

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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 25 May 2018. Closing dates for objections were 24 June 2018. Copies of the advertisement were sent to the surrounding neighbours, Ward Councillor, Manager and Chairperson of the relevant Sub-Council. No objections 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 comments or objections 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: Lease Plan ET 632

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FOR FURTHER DETAILS CONTACT:

NAME	ELEANOR ARENDS
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DIRECTORATE	ASSETS AND FACILITIES MANAGEMENT (AFM)
FILE REF No	H14/3/6/1/2/202
MANAGER : PROPERTY HOLDING RACHEL SCHNACKENBERG	Munackenberg 19-11-2018

Gelderbloem
**DIRECTOR : PROPERTY MANAGEMENT IN HER
 CAPACITY AS EXECUTIVE DIRECTOR : ASSETS &
 FACILITIES MANAGEMENT NOMINEE**

NAME RUBY GELDERBLOEM

DATE 2018-11-21

Comment:

P 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 26-11-2018

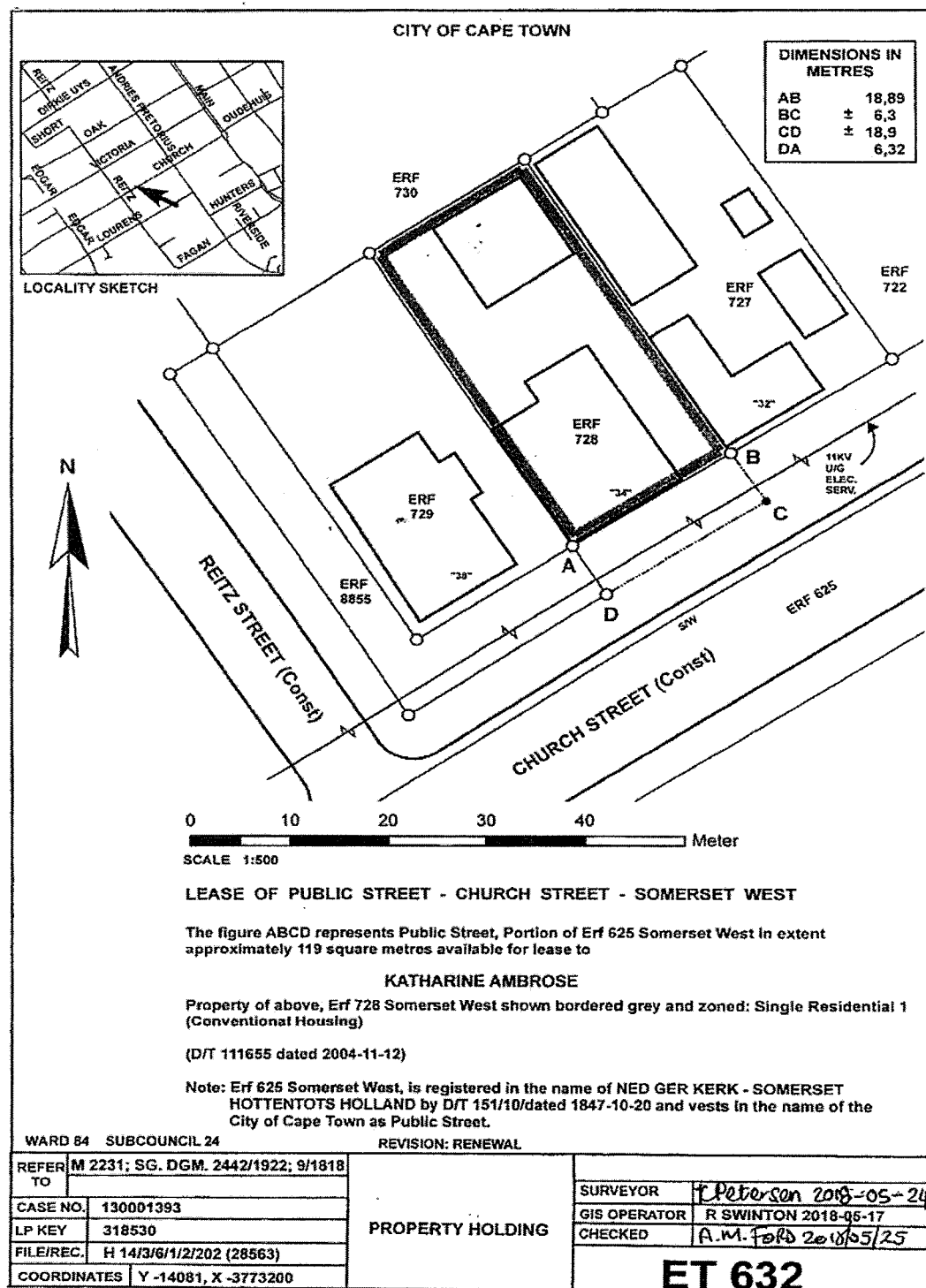
Comment:

Certified as legally compliant:

Based on the contents of the report.

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ANNEXURE A



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