



CITY OF CAPE TOWN
ISIXEKO SASEKAPA
STAD KAAPSTAD

SUBCOUNCIL 24

SUBRAAD 24

IBHUNGA 24

Acknowledge Receipt

Erken Ontvangs

Isiqinisekiso sokufumaneka

Date/Datum/Urnhlal: 27/6/2019

Signature/Handtekening/Utyikityo: [Signature]

REPORT TO SUBCOUNCIL 24

LC 22468/1

1. ITEM NUMBER

2. SUBJECT

24SUB 8/8/2019

PROPOSED LEASE OF PORTION OF PUBLIC PLACE, PORTION OF ERF 2351, ADJACENT ERF 19474, WINDSOR ROAD, SOMERSET WEST: CELIA SUSAN FALKENBERG

2. ONDERWERP

VOORGESTELDE VERHURING VAN OPENBARE PLEK, GEDEELTE VAN ERF 2351, AANGRENSEND AAN ERF 19474, WINDSORWEG, SOMERSET-WES: CELIA SUSAN FALKENBERG

2. ISIHLOKO

ISIPHAKAMISO SOKUQESHISWA KWESIQEPHU SENDAWO YOLUNTU, ESISIQEPHU SESISZA-2351, ESIMELENE NESIZA-19474, WINDSOR ROAD, E-SOMERSET WEST: KU-CELIA SUSAN FALKENBERG

K3764

Case ID: 130001629

H14/3/6/1/2/65

(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 27 paragraph 19 (7), 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 place, erf 2351, adjacent erf 19474 Windsor Road, Somerset West to Celia Susan Falkenberg for gardening and security purposes.		
Site extent	362 m ²		
Submission date	14 May 2015 (Inspection Date) No application form		
Current zoning	Public Place		
Current usage	Gardening and Security		
Proposed usage	Gardening and Security		
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	29 June 2015		
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. Two objections were received, but were withdrawn.		
WARD CLLR	NOTICE DATE		WARD
Cllr S Pringle	25 May 2018		84
Viable	Yes		No
	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 place, being portion of erf 2351, adjacent erf 19474, situated at Windsor Road, Somerset West, shown hatched and lettered ABC on the attached sketch ET 472 marked annexure A, in extent approximately 362 m², to Celia Susan Falkenberg, owner of Erf 19474 or her successors in title, be approved subject to inter alia the following conditions, that:

- a) A tariff rental of R1671,30 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 and security 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.

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5. AANBEVELINGS VIR OORWEGING EN KOMMENTAAR DEUR DIE BETROKKE SUBRAAD

Daar word aanbeveel dat die verhuring van 'n gedeelte van openbare plek, naamlik 'n gedeelte van erf 2351, aangrensend aan erf 19474, geleë te Windsorweg, Somerset-Wes, aangetoon deur arsering en die letters ABC op die aangehegte skets ET 472 gemerk bylae A, ongeveer 362 m² groot, aan Celia Susan Falkenberg, eienaar van erf 19474 of haar regsopvolgers, goedgekeur word, onderworpe aan onder andere die volgende voorwaardes, naamlik dat:

- a) 'n Tariefhuurgeld van R1 671,30 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 tuinmaak- en sekuriteitsdoeleindes 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 UKUBA ZIQWALASELWE KWAYE KUVAKALISWE ULUVO LIBHUNGANA ELIFANELEKILEYO

Kundululwe ukuba makuphunyezwe uqeshiso lwesiqephu sesitrato soluntu esisiqephu sesiza-2351, esimelene nesiza-19474, esise- Windsor Road, e-Somerset West, esibonakaliswe ngomzobo nangonobumba abakhulu u-ABC kumzobo oqhotyoshelweyo ongu-ET 472, ophawulwe kwisihlomelo-A, esibukhulu obumalunga nama-362 m², ku-Celia Susan Falkenberg, ongumnini wesiza-19474, e-Somerset West okanye kongena ezihlangwini zakhe ngokwetayitile, ngokuxhomekeke ekuthotyolweni kwale miqathango ilandelayo, yokuba:

- a) Makuhlululwe ixabiso lerenti elili-R1 671,30 ngonyaka (ngaphandle kweRhafu-ntengo) ngexabiso elibalwe ngexabiso elijoliswe kwixesha elo lonaniselwano. IiRhafu zokuhlala azihlawulwa;
- b) Uqeshiso luyakuthi luqhubekeke isithuba seminyaka elishumi kubekho nommiselo wokuhlaziywa eminye iminyaka elishumi;

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- c) Irenti iyakuthi ilungelelaniswe rhoqo ngonyaka ngokwesakheko samaxabiso serenti njengoko siphunyezwe liBhunga;
- d) Ipropati iyakuthi isetyenziselwe imibandela yezasegadini nokhuseleko kuphela;
- 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 a portion of public place, erf 2351 abutting erf 19474 situated at Windsor Road, Somerset West, shown hatched and lettered ABC on the attached sketch ET 472 marked annexure A, in extent approximately 362 m², to Celia Susan Falkenberg, or her successors in title for the lease of the aforementioned property for garden and security purposes for a period of ten (10) years with an option to renew for a further period of ten (10) years.

The previous owner of erf 19474 Somerset West, entered into a lease agreement with the erstwhile Somerset West Municipality in respect of portion of Erf 2351 Somerset West commencing August 1988 for gardening purposes. The lease has since been renewed for various periods. The property was sold in 2010 to the current applicant who applied to continue with the use of the land by entering into lease for a portion of erf 2351 Somerset West. The lease has since expired but the applicant has continued to lease the property on a month to month basis in terms of the legal principle of tacit relocation. The applicant wishes to enter into a new lease agreement. The applicant has maintained the subject property to the satisfaction of the City of Cape Town.

The Applicant is currently in occupation of the subject property 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 B 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.

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.

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As part of the public participation process a call for comments or objections 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. Two objections were received from surrounding neighbours, but after further consultation the objections were withdrawn attached hereto as Annexure C and D.

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 Any alterations or deviations to electricity services necessary as a consequence of the proposal, or requested by the applicant, will be carried out at the applicant's cost;
- 6.2.2 Timeous application for the above is required. The connection fee and conditions will be determined upon receipt of a formal application;
- 6.2.3 Unrestricted 24 hour vehicular and personnel access to the area/lane is to be maintained for the purpose of accessing and maintaining electricity services;
- 6.2.4 Any employee of servant or contractor of the City of Cape Town has the right to construct and/or erect and lay such poles, stays, cables, wires or appurtenances relating thereto as may be necessary, together with the right to sue, inspect, maintain, repair, alter, relay and/or remove all such poles, stays, cables, wires or appurtenances aforesaid. This includes the right to bring machinery onto the property and to carry out excavations;
- 6.2.5 No building, containers or structure shall be erected within 1 m of the electrical services;
- 6.2.6 No excavation or filling shall be carried out within 1 m of any part of the electricity services;
- 6.2.7 No stakes, pegs or pins shall be driven into the ground within 1 m of any part of the electricity services;
- 6.2.8 No plant or material shall be stored within 1 m of any part of the electricity services;
- 6.2.9 Any building or structure erected outside the servitude shall comply with Regulation 15 of the Electrical Machinery Regulations of the Occupational Health and Safety Act No 85 of 1993;
- 6.2.10 No trees are to be removed without the consent of the Environmental & Heritage Management Branch (Environmental Section).

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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 R1671.30 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 exceed R15 000,00. See Tax Clearance Certificate attached hereto as Annexure B.

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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 R1671.30 per annum excluding VAT calculated at the rate applicable at the time of transaction be payable, as well as rates and taxes, if applicable.

Management of Risk

No operational or control risk to the City.

Stakeholder comments and recommendations

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. Two objections were received from surrounding neighbours, but after further consultation the objections were withdrawn.

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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.

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 472

Annexure B: Copy of Tax Clearance Certificate

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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	H14/3/6/1/2/3/65
MANAGER : PROPERTY HOLDING RACHEL SCHNACKENBERG	Mackenberg 09-04-2019

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

NAME RUBY GELDERBLOEM

DATE 2019-04-17

Comment:

Joubert
 LEGAL COMPLIANCE

NAME Ivan Mari Holt

TEL 021 400 2753

DATE 10/05/2019

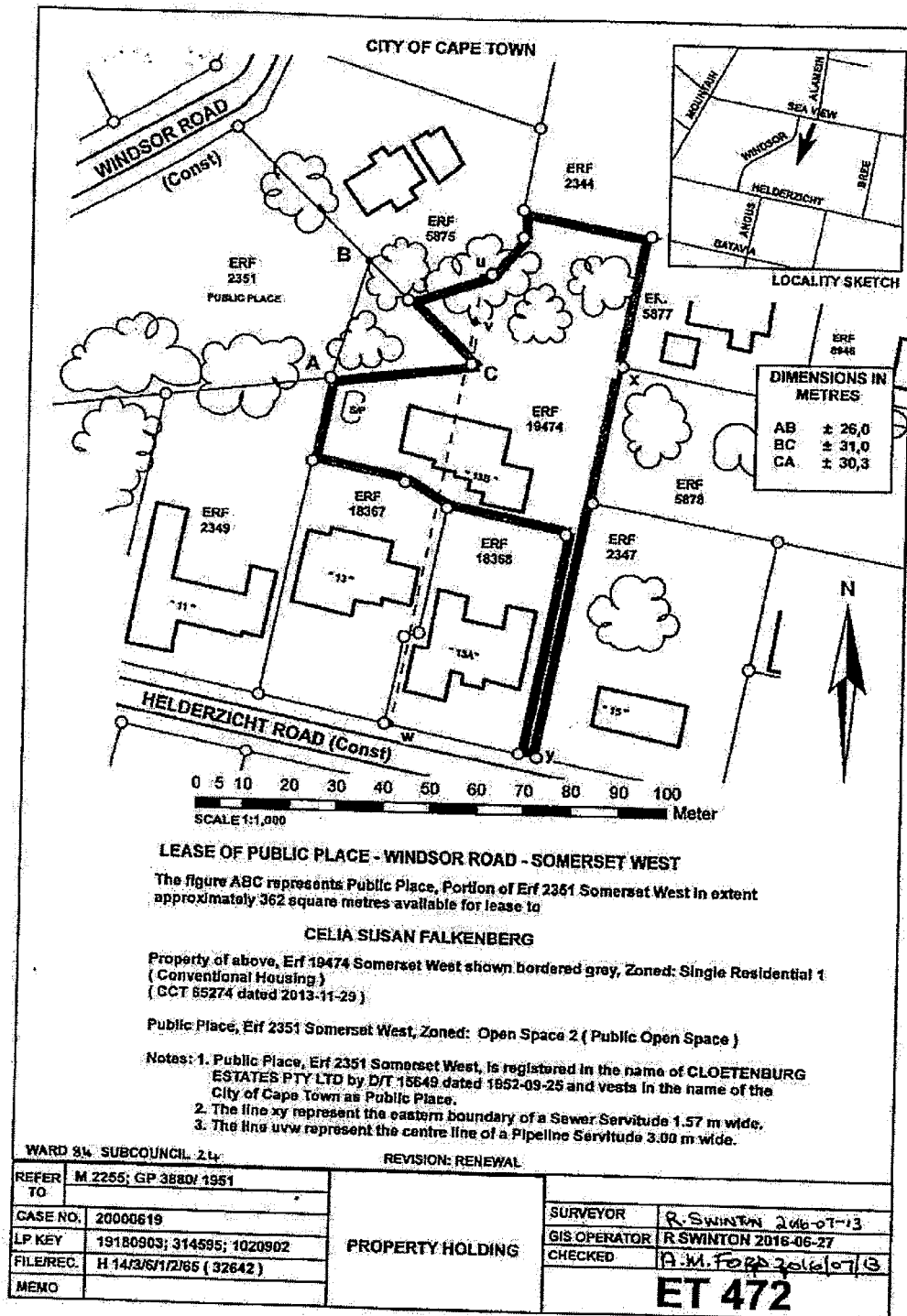
☒ REPORT COMPLIANT WITH THE PROVISIONS OF
 COUNCIL'S DELEGATIONS, POLICIES, BY-LAWS
 AND ALL LEGISLATION RELATING TO THE MATTER
 UNDER CONSIDERATION.

☐ NON-COMPLIANT

Comment:

BMH
 Certified as legally compliant:
 based on the contents of the report.

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Tax Clearance Certificate Number:
0700/2/2019/A002702018

Tax Clearance Certificate - Good Standing

Enquiries
0800 09 SARS (7277)
Approved Date
2019-02-13
Expiry Date
2020-02-13

Identity number 7206160163081

Income Tax 1837482841
CS FALKENBERG

Trading Name

It is hereby confirmed that, on the basis of the information at the disposal of the South African Revenue Service (SARS), the above-mentioned taxpayer has complied with the requirements as set out in the Tax Administration Act.

This certificate is valid until the expiry date reflected above, subject to the taxpayer's continued tax compliance. To verify the validity of this certificate, contact SARS through any of the following channels:

- via eFiling
- by calling the SARS Contact Centre
- at your nearest SARS branch

This certificate is issued in respect of the taxpayer's tax compliance status only, and does not address any other aspect of the taxpayer's affairs.

This certificate is issued free of charge by SARS

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Yanga Pika

From: Vanessa Whaits <vanessawhaits@gmail.com>
Sent: Tuesday, 19 June 2018 5:35 PM
To: Yanga Pika
Cc: Garth Whaits; Cathy Hugo
Subject: Proposed Lease of Public Place: ERF 2351 Ref H14/3/6/1/2/65

Dear Sir

Thank you for your letter in respect of this proposed rental. I am grateful to you for giving us the opportunity to comment.

I have the following concerns:

- 1) That property was gifted to the community for the use of the community and housed with the City of Cape Town to protect;
- 2) The property is currently used by the community for dog walking, young children and their parents regularly use the space;
- 3) It is one of the only, if not THE ONLY open space for the use of the community and the young families that live in the area;
- 4) The owner of the property who is proposing to rent that space has a massive piece of property that can be used for gardening purposes and it seems wholly unfair to deprive the communities families of that space for the benefit of a single family;
- 5) While it is only a portion of the property that will be rented out, it creates a precedent for the remainder of the park to be rented out and may well result in the entire space being lost to the public and the community over time;
- 6) The rental amount is very low given what property in the area is sold for/rented out at;
- 7) If the City of Cape Town needs the money to maintain the rest of the park, then I imagine that those members of the community would be prepared to chip in and help with maintenance. I would be happy to assist with mobilising such an initiative if it is required.

At the very least, I would suggest that the City consult more broadly, as the people in the community who use the open area, are not necessarily the ones who border on the park. It is used by families who are more broadly and widely spread.

Thanks again for the opportunity to comment.

All the best
Vanessa Whaits
9 Helderzicht Road, Somerset West
vanessawhaits@gmail.com
082 494 7196

Yanga Pika

From: Cathy Hugo <hugoinrsa@mweb.co.za>
Sent: Wednesday, 20 June 2018 1:58 PM
To: Yanga Pika
Subject: Ref: H14/2/6/1/2/55

Dear Yanga,

Thank you for the letter in respect of this park property rental.

I do, however, think the letter we received was confusing and quite misleading as it implied that the lease of the portion of the park under discussion was something that would be happening in the future and a piece of the current park property would be lost to the community.

I have no problem with this portion of park land continuing to be leased to Celia Susan Falkenberg as it is currently incorporated into the garden of their property. From what I understand, it has been this way for many years and the lease was instigated by previous owners of the property, since the odd shape of the land in question and the presence of two large trees made it a desirable area for vagrants to gather and resulted in a security risk.

Kind regards
Cathy Hugo
082 357 3810
2 Windsor Road, Somerset West

Adele Bannister

From: Vanessa Whaits <vanessawhaits@gmail.com>
Sent: Friday, 15 March 2019 9:20 PM
To: Adele Bannister
Subject: Re: H14/3/6/1/2/65 - Proposed renewal of lease Ptn Erf 2351 adj Erf 19474, SW - C S Falkenberg

Hello

I hereby withdraw my objection. Please feel free to proceed.

All the best

Vanessa

vanessawhaits@gmail.com

082 494 7196

On 28 Feb 2019, at 11:49 AM, Adele Bannister <Adele.Bannister@capetown.gov.za> wrote:

Dear Ms Whaits

I refer to the above-mentioned matter and renewal of a current lease we are processing for C S Falkenberg.

In the public participation process we received 2 objections, one of which was retracted and support was received from the writer.

The other objection came from you. Ms Cathy Hugo was also copied in. She in the meantime responded to the City saying that she also has no problem with the renewal of the lease as she found the letter misleading and that the lease triangle area actually is helping with vagrants, etc. and therefore supports the renewal of the lease.

In order for us to continue with the approval process (report to subcouncil) it will be greatly appreciated if you can give your final comments on the matter. Should no response be received from you within the next 5 working days it will be accepted that you are in support of the lease renewal of the current lease agreement.

Please don't hesitate to contact me should you need any further information.

Regards

Adele Bannister

Last Region - Property Holding - Property Management Department

Property Holding Leasing - Assets & Facilities Management

Omniforum Building, 94 Van Riebeeck Road, Kuils River

Tel: 021 444 4148 ; Email: adele.bannister@capetown.gov.za | Web: www.capetown.gov.za

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