

CITY OF CAPE TOWN
ISIXEKO SASEKAPA
STAD KAAPSTAD

REPORT TO SUBCOUNCIL 24

LC24087

1 ITEM NUMBER 24SUB 30/02/2020

2 SUBJECT

PROPOSED LEASE OF A PORTION OF ERF 3212 ADJACENT TO ERF 8029
BETWEEN CASTILLE DRIVE AND IRENE AVENUE, SOMERSET WEST:
DEBORAH IRENE HOYLE

2 ONDERWERP

VOORGESTELDE VERHURING VAN 'N GEDEELTE VAN ERF 3212
AANGRENSEND AAN ERF 8029, GELEË TUSSEN CASTILLERYLAAN EN
IRENELAAN, SOMERSET-WES: DEBORAH IRENE HOYLE

2 ISIHLOKO

ISIPHAKAMISO SENGQESHISO NGESIQEPHU SESIZA 3212 ESIMELENE
NESIZA 8029 ESIPHAKATHI KWE-CASTILLE DRIVE NE-IRENE AVENUE,
SOMERSET WEST: KUDEBORAH IRENE HOYLE

L1783

PTMS NO: 130001486

File Ref No: H14/3/6/1/2/268

(Category 4)

3 DELEGATED AUTHORITY

- ☒ The report is for comment by Subcouncil to the competent authority in terms of Part 24, Delegation 10(1).

"To comment to the competent authority on the granting of rights to use, manage or control City immovable assets such as land, property and buildings and to recommend conditions of approval where deemed necessary."

- ☐ In terms of delegation Part 27B 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.

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“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.
- 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 decision lies with Director: Property Management.

4 EXECUTIVE SUMMARY

PURPOSE OF REPORT	To consider the proposed lease of a portion of erf 3212 adjacent to erf 8029 Somerset West to Deborah Irene Hoyle for gardening and security purposes.		
Site extent	215 m ²		
Submission date	3 May 2017		
Current zoning	Open Space 2 (Public Open Space)		
Current usage	Gardening & Security		
Proposed usage	Gardening & Security		
WARD CLLR	NOTICE DATE	WARD	
Gregory Peck	9 September 2019	15	
Internal circulation date	19 September 2017		
Internal department comments	No objections were received.		
Public participation outcome summary	Advertised in the Cape Argus and Die Burger on 7 June 2019. No objections were received.		
Viable	Yes		No x
	The subject property is regarded as non-viable land which only has value to the abutting landowners in light of the fact that it cannot be developed or function as a separate entity. This property transaction may be approved without any competitive process having been followed on the basis that no purpose would be served by a competitive process		
Recommended decision	Approval	x	Refusal
Regulation 34(1) In-principle approval	Granted by Director: Property Management in terms of delegated authority after 21 June 2018		

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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. • A tariff related rental income will be generated. • The lessee has been leasing the subject property since 1996. 	
Strategic intent	SFA 1 : an OPPORTUNITY City of Cape Town	
	Objective 1.1	Positioning Cape Town as forward looking globally competitive City
	Programme 1.1(g)	Leveraging the City's assets

5 RECOMMENDATIONS FOR CONSIDERATION AND COMMENT BY THE RELEVANT SUBCOUNCIL

It is recommended that the lease of portion of public open space, being a portion of 3212 adjacent to erf 8029 between Castille Drive and Irene Avenue, Somerset West, shown hatched by the figure ABCD on the attached sketch ET 669 marked annexure A, in extent approximately 215 m², to Deborah Irene Hoyle, owner of erf 8029 Somerset West or her successors in title, be approved subject to inter alia the following conditions:

- a) A tariff rental of R1 566,09 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 (10) years, with an option to renew for a further ten (10) 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 oop ruimte, synde 'n gedeelte van erf 3212 aangrensend aan erf 8029 tussen Castillerylaan en Irenelaan, Somerset-Wes, gearseer en met die figuur ABCD op die aangehegte skets ET 669, gemerk bylae A, aangetoon, ongeveer 215 m² groot, aan Deborah Irene Hoyle, eienaar van erf 8029 Somerset-Wes of haar regsopvolgers, goedgekeur word onderworpe aan onder meer die volgende voorwaardes:

- a) 'n Tariefhuurbedrag van R1 566,09 per jaar, BTW uitgesluit bereken teen die koers van toepassing ten tye van die transaksie, betaalbaar is;
- b) Die huurooreenkoms vir 'n tydperk van tien jaar sal geld met die opsie om dit vir 'n verdere tien jaar te hernu;
- c) Die huurbedrag jaarliks aangepas sal word volgens die huurtariefstruktuur soos deur die Raad goedgekeur;
- d) Die eiendom slegs vir tuinmaak- en sekuriteitsdoeleindes gebruik word;
- e) Onderworpe aan sodanige verdere voorwaardes opgelê deur die direkteur: eiendombestuur ingevolge haar gedelegeerde magtiging;
- f) Onderworpe aan die nakoming van enige ander statutêre vereistes;
- g) Geen vergoeding betaalbaar sal wees vir enige verbeteringe aan die eiendom nie.

5 IZINDULULO UKUBA ZIQWALASELWE KWAYE KUVAKALISWE ULUVO LIBHUNGANA ELIFANELEKILEYO

Kundululwe ukuba makuphunyezwe ingqeshiso ngesiqephu sendawo yoluntu, isiqephu sesiza-3212 esimelene nesiza-8029 esiphakathi kweCastille Drive ne-Irene Avenue eSomerset West esibonakaliswe ngemigca ekrweliweyo noonobumba ABCD kwisazobe esingu-ET 669 esiqhotyoshelwe nesiphawulwe njengesihlomelo A, esibukhulu bumalunga nama-215 m², ku-Deborah Irene Hoyle, umnini wesiza-8029 eSomerset West okanye abangena ezihlangwini zakhe ngokwetayitile ngokuxhomekeke phakathi kwezinye izinto kule miqathango ilandelayo:

- a) Makuhlululwe ixabiso lerenti elingama-R1 566,09 ngonyaka ngaphandle kweRhafu-ntengo ebalwe ngokwexabiso elisetyenziswayo ngexesha lonaniselwano. Akukho zintlawulo zobuhlali;

Handwritten signature/initials

- b) Inggqeshiso izakuhlala isithuba seminyaka elishumi(10) apho kuyakuthi kubekho ummiselo wokuzikhethela ukuhlaziya kweminye iminyaka elishumi(10);
- c) Ixabiso lerenti liyakuthi lilungelelaniswe rhoqo ngonyaka ngokungqinelana nesakheko samaxabiso njengoko siphunyezwe liBhunga;
- d) Ipropati kufuneka isetyenziselwe kuphela imibandela yezasegadini neyokhuseleko;
- e) Ngokuxhomekeke kweminye imiqathango eyongeziweyo eya kumiselwa nguMlawuli: woLawulo lweePropati ngokwamagunya akhe awagunyaziselweyo;
- f) Ngokuxhomekeke ekuthotyelweni kwayo nayiphina imimiselo yomthetho engeminye;
- g) Ngokuxhomekeke ekuthotyelweni kwayo nayiphina imimiselo yomthetho engeminye.

6 DISCUSSION/CONTENTS

6.1 BACKGROUND:

An application was received for the lease of portion of public open space, being a portion of erf 3212 adjacent to erf 8029 between Castille Drive and Irene Avenue, Somerset West, shown hatched by the figure ABCD on the attached sketch ET 669 marked annexure A, in extent approximately 215 m², to Deborah Irene Hoyle, owner of erf 8029 Somerset West for gardening and security purposes for a period of ten (10) years with an option to renew for a further period of ten (10) years.

The applicant leased the subject property since 1996 and wishes to enter into a new lease agreement with the City of Cape Town for the continued use for gardening and security purposes. Mrs Hoyle is currently utilizing the subject area and has maintained it to the satisfaction of the City of Cape Town.

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 comments/objections and no objections were received.

6.2 CONSULTATION WITH INTERNAL 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:

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6.2.1 No mechanical plant or vibrator type compactors may be used within three meters of any Open Serve plant above or below ground level.

6.2.2 A written request must be submitted to Open Serve for consideration should the applicant require the plant to be relocated. The cost of such relocation will be recoverable from the applicant.

6.3 VALUATION

The application category fits within the tariff structure of the City approved on 29 May 2019;

An annual rental tariff of R1 566,09 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 land is not required for the provision of the minimum level of a basic municipal service.

6.4.2 Chapter C of Council's policy entitled 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 30 May 2019 (C18/05/19), paragraph 98.3 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 30 May 2019 (C18/05/19), paragraph 99 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."

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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 99 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**.

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 <input checked="" type="checkbox"/>	Yes <input type="checkbox"/>
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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 R1 566,09 per annum excluding VAT calculated at the rate applicable at the time of transaction be payable. Rates not applicable.

Management of Risk

No operational or control risk to the City.

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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 7 June 2019. Closing dates for objections were 8 July 2019. Copies of the advertisement were sent to the Ward Councillor, Manager and Chairperson of the relevant Sub-Council and registered local community organisations. 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 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: Sketch Plan ET 669
Annexure B: SARS Tax Clearance Certificate

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FOR FURTHER DETAILS CONTACT:

NAME	NOMPUMELELO FAKU
CONTACT NUMBERS	021 444 4612
E-MAIL ADDRESS	NOMPUMELELO.FAKU@CAPETOWN.GOV.ZA
DIRECTORATE	ECONOMIC OPPORTUNITIES & ASSET MANAGEMENT
FILE REF NO	H14/3/6/1/2/268
MANAGER: PROPERTY HOLDING RACHEL SCHNACKENBERG	Mumackenberg 20-11-2019

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

NAME RUBY GELDERBLOEM

DATE 2019.12.05

Comment:

Joan-Mari Holt
LEGAL COMPLIANCE

NAME Joan-Mari Holt

TEL 021 400 2753

DATE 18/12/2019

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

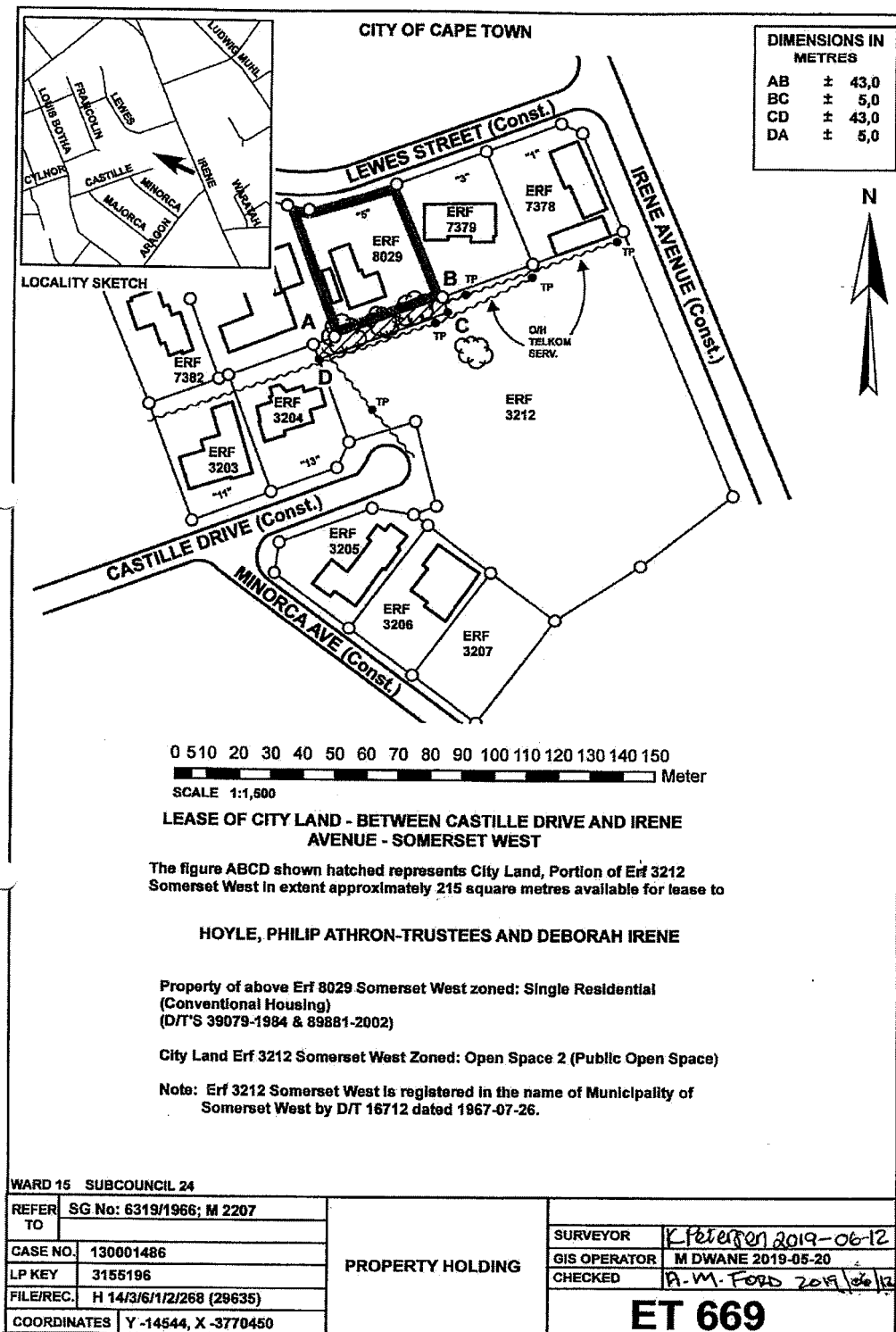
☐ NON-COMPLIANT

Comment:

Joan-Mari Holt
Certified as legally compliant:
Based on the contents of the report.

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Annexure A



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Annexure B



Tax Clearance Certificate Number:
0700/2/2019/A003477742

Tax Clearance Certificate - Good Standing

Enquiries
0800 00 SARS (7277)
Approved Date
2019-10-10
Expiry Date
2020-10-10

Identity number 5201220165087

Income Tax 1565056148
DI HOYLE

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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