

ITEM NUMBER: C 43/05/16

*RECOMMENDATION FROM THE EXECUTIVE MAYOR: 03 MAY 2016*

MC 22/05/16 ACQUISITIVE PRESCRIPTIVE CLAIM OVER A PORTION OF ERF 88342, CAPE TOWN, SITUATED AT ST JAMES ROAD: DAVID MOTTERSHEAD

It is **RECOMMENDED** that:

- (a) based on the evidence submitted by the claimant, Council, in terms of the provisions of Section 5 of the City of Cape Town Immovable Property By-law 2015, read with Section 1 of the Prescription (Local Authorities) Ordinance No 16 of 1964, admit the acquisitive prescriptive claim over a portion of Public Street, being a portion of Erf 88342, Cape Town situated at St James Road, in extent approximately 6 m<sup>2</sup> and as depicted on Plan LT 1214v0 attached as Annexure B to the report on the agenda, by David Mottershead
- (b) Council approve that the subject property be transferred to David Mottershead
- (c) all costs in connection with this transaction will be borne by the applicant
- (d) any and all other statutory requirements must be complied with.

IPAC 52/03/2016

ACQUISITIVE PRESCRIPTIVE CLAIM OVER A PORTION OF ERF 88342 CAPE  
TOWN, SITUATED AT ST JAMES ROAD: DAVID MOTTERSHEAD

MC 22/05/16

EIS OM VERKRYGENDE VERJARING OOR 'N GEDEELTE VAN ERF 88342,  
KAAPSTAD GELEË TE ST. JAMESWEG: DAVID MOTTERSHEAD

AUBANGO OLUNGOKUNIKEZELWA KWESIQEPHU SESIZA-88342  
ESISEKAPA, ESISE-ST JAMES ROAD: LUKA-DAVID MOTTERSHEAD

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

### RECOMMENDATIONS

Not delegated: for decision by Council:

It is recommended that:

- (a) Based on the evidence submitted by the claimant, Council, in terms of the provisions of Section 5 of the City of Cape Town Immovable Property By-law 2015, read with Section 1 of the Prescription (Local Authorities) Ordinance No 16 of 1964, admit the acquisitive prescriptive claim over a portion of Public Street, being a portion of Erf 88342 Cape Town, situated at St James Road, in extent approximately 6 m<sup>2</sup> and as depicted on Plan No LT 1214v0 attached and marked annexure B, by David Mottershead.
- (b) Council approve that the subject property be transferred to David Mottershead.
- (c) All costs in connection with this transaction will be borne by the applicant.
- (d) Any and all other statutory requirements must be complied with.

### AANBEVELINGS

Nie gedelegeer nie: vir besluitneming deur die Raad:

Daar word aanbeveel dat:

- (a) Gegrond op die bewyse ingedien deur die eiser, laat die Raad, ingevolge die bepalings van artikel 5 van die Stad Kaapstad Verordening op Onroerende Eiendom, 2015, saamgelees met artikel 1 van die Ordonnansie op Verjaring (plaaslike owerhede), no. 16 van 1964, die eis om verkrygende verjaring oor 'n gedeelte van 'n openbare straat, naamlik 'n gedeelte van erf 88342 Kaapstad, gelee te St. Jamesweg, ongeveer 6 m<sup>2</sup> groot, soos aangetoon op die aangehegte plan LT 1214v0, aangeheg en gemerk bylae A, van David Mottershead, toe.
- (b) Die Raad goedkeuring daaraan verleen dat die onderhawige eiendom aan David Mottershead oorgedra word.
- (c) Alle onkoste met betrekking tot hierdie transaksie deur die aansoeker gedek sal word.

(d) Daar voldoen word aan enige en alle ander statutêre vereistes.

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ISINDULULO

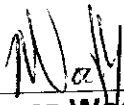
Azigunyaziswanga: isigqibo seseBhunga:

Kundululwe ukuba:

- a) Ngokubhekiselele kubungqina obungeniswe ngumbangi, iBhunga ngokwemimiselo necandelo 5 loMthetho kaMasipala ophathelene noLawulo nokuPhathwa kweePropati ezingenakuSuswa zeSixeko saseKapa, wango-2015, efundeka kunye necandelo-1 loMmiselo (ooGunaziwe boMmandla) uMmiselo ongunomb.16 wangowe-1964, malamkele ubango lokunikezelwa ngokommiselo lwesiqephu seSitalato soLuntu, esisiqephu sesiza-88342 esiseKapa e-St James Road, esibukhulu obumalunga ne-6 m<sup>2</sup> kwaye njengoko sibonakaliswe kwiplani engunomb. LT 1214v0 esiqhotyoshelwe nesiphawulwe kwisihlomelo-A, ku- David Mottershead.
- b) IBhunga maliphumeze ukuba makutshintshelwe ipropati le ichaphazelekayo ku- David Mottershead.
- c) Zonke iindleko eziphathelene nolu naniselwano ziyakuthi zibeluxanduva lomfaki- sicelo.
- d) Nayiphina kunye nayo yonke imimiselo yomthetho kufuneka ithotyelwe.

**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:

7/4/16

COMMENT:

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DIRECTOR : LEGAL SERVICES  
LUNGELO MBANDAZAYO

DATE:

2016 -04- 11

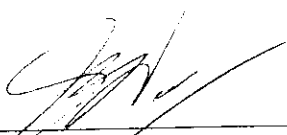
COMMENT:

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ALDERMAN IAN NEILSON  
MAYORAL COMMITTEE MEMBER : FINANCE

COMMENT:

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DATE:

14/A/16

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CITY OF CAPE TOWN  
ISIXEKO SASEKAPA  
STAD KAAPSTAD

Making progress possible. Together.

**REPORT TO IMMOVABLE PROPERTY ADJUDICATION COMMITTEE**

**DATE:**

1. **ITEM NUMBER :**
2. **SUBJECT**  
**ACQUISITIVE PRESCRIPTIVE CLAIM OVER A PORTION OF ERF 88342**  
**CAPE TOWN, SITUATED AT ST JAMES ROAD: DAVID MOTTERSHEAD**
2. **ONDERWERP:**  
**EIS OM VERKRYGENDE VERJARING OOR 'N GEDEELTE VAN ERF 88342,**  
**KAAPSTAD GELEË TE ST. JAMESWEG: DAVID MOTTERSHEAD**
2. **ISIHLOKO:**  
**AUBANGO OLUNGOKUNIKEZELWA KWESIQEPHU SESIZA-88342**  
**ESISEKAPA, ESISE-ST JAMES ROAD: LUKA-DAVID MOTTERSHEAD**

LSU: G2305  
PH 2016/0033 (Category 3)  
S14/3/8/3/8/00/88327

**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   |

**4. PURPOSE**

To recommend that Council in terms of section 5 of the City of Cape Town Immovable Property By-Law 2015 admit the acquisitive prescriptive claim over a portion of Public Street, being a portion of Erf 88327 Cape Town, situated at St James Street, in extent approximately 6 m<sup>2</sup> on behalf of David Mottershead.

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## 5. FOR DECISION BY COUNCIL

This report is for consideration by

- The Immovable Property Adjudication Committee
- The Executive Mayor together with the Mayoral Committee
- Council

## 6. EXECUTIVE SUMMARY

|                                      |   |             |         |    |
|--------------------------------------|---|-------------|---------|----|
| PURPOSE OF REPORT                    | To recommend that Council in terms of section 5 of the City of Cape Town Immovable Property By-Law 2015 admit the acquisitive prescriptive claim over a portion of Public Street, being a portion of Erf 88342 Cape Town on behalf of David Mottershead |             |         |    |
| Property description                 | Portion of Erf 88342 Cape Town  |             |         |    |
| Applicant                            | David Mottershead   |             |         |    |
| Site extent                          | ± 6 m <sup>2</sup>  |             |         |    |
| Current zoning                       | Public Street   |             |         |    |
| Current usage                        | Existing building   |             |         |    |
| Proposed usage                       | Existing building   |             |         |    |
| Application description              | Acquisitive prescriptive claim  |             |         |    |
| Submission date                      | 19 November 2014  |             |         |    |
| Circulation date                     | Not applicable due to nature of application   |             |         |    |
| Comments                             | Required legal opinion from Director: Compliance and Auxiliary Services – Legal Services  |             |         |    |
| Public participation outcome summary | Not applicable due to the nature of the application   |             |         |    |
| Outcome of Sub-Council consideration | The matter was considered by Subcouncil 19 at the meeting held on 18 January 2016 under Reference Number 19SUB23/1/2016 and was <b>supported</b> .<br><b>(Annexure A)</b> .   |             |         |    |
| WARD Cllr<br>Cllr D D'Alton          | NOTICE  | DATE<br>n/a | WARD    | 64 |
| Viable                               | Yes   |             | No      | x  |
| Recommended decision                 | Approval  | X           | Refusal |    |

## 7. RECOMMENDATIONS

Not delegated: for decision by Council:

It is recommended that:

- (a) Based on the evidence submitted by the claimant, Council, in terms of the provisions of Section 5 of the City of Cape Town Immovable Property By-law 2015, read with Section 1 of the Prescription (Local Authorities) Ordinance No 16 of 1964, admit the acquisitive prescriptive claim over a portion of Public Street, being a portion of Erf 88342 Cape Town, situated at St James Road, in extent approximately 6 m<sup>2</sup> and as depicted on Plan No LT 1214v0 attached and marked **annexure B**, by David Mottershead.
- (b) Council approve that the subject property be transferred to David Mottershead.
- (c) All costs in connection with this transaction will be borne by the applicant.
- (d) Any and all other statutory requirements must be complied with.

## 7. AANBEVELINGS

Nie gedelegeer nie: vir besluitneming deur die Raad:

Daar word aanbeveel dat:

- (a) Gegrand op die bewyse ingedien deur die eiser, laat die Raad, ingevolge die bepaling van artikel 5 van die Stad Kaapstad Verordening op Onroerende Eiendom, 2015, saamgelees met artikel 1 van die Ordonnansie op Verjaring (plaaslike owerhede), no. 16 van 1964, die eis om verkrygende verjaring oor 'n gedeelte van 'n openbare straat, naamlik 'n gedeelte van erf 88342 Kaapstad, geleë te St. Jamesweg, ongeveer 6 m<sup>2</sup> groot, soos aangetoon op die aangehegte plan LT 1214v0, aangeheg en gemerk bylae A, van David Mottershead, toe.
- (b) Die Raad goedkeuring daaraan verleen dat die onderhawige eiendom aan David Mottershead oorgedra word.
- (c) Alle onkoste met betrekking tot hierdie transaksie deur die aansoeker gedek sal word.
- (d) Daar voldoen word aan enige en alle ander statutêre vereistes.

## 7. ISINDULULO

Azigunyaziswanga: isigqibo seseBhunga:

Kundululwe ukuba:

- a) Ngokubhekiselele kubungqina obungeniswe ngumbangi, iBhunga ngokwemimiselo necandelo 5 loMthetho kaMasipala ophathelene noLawulo nokuPhathwa kweePropati ezingenakuSuswa zeSixeko saseKapa, wango-2015, efundeka kunye necandelo-1 loMmiselo (ooGunaziwe boMmandla) uMmiselo ongunomb.16 wangowe-1964, malamkele ubango lokunikezelwa ngokommiselo lwesiqephu seSitalato soLuntu, esisiqephu sesiza-88342 esiseKapa e-St James Road, esibukhulu obumalunga ne-6 m<sup>2</sup> kwaye njengoko sibonakaliswe kwiplani engunomb. LT 1214v0 esiqhotyoshelwe nesiphawulwe kwisihlomelo-A, ku-David Mottershead.
- b) IBhunga maliphumeze ukuba makutshintshelwe ipropati le ichaphazelekayo ku-David Mottershead.
- c) Zonke iindleko eziphathelene nolu naniselwano ziyakuthi zibeluxanduva lomfakisicelo.
- d) Nayiphina kunye nayo yonke imimiselo yomthetho kufuneka ithotyelwe.

## 8. DISCUSSION / CONTENTS

### 8.1 BACKGROUND:

- 8.1.1 The encroachment on St James Road, now claimed by the owner of the abutting property, David Mottershead, is shown as the figure ABCD on Plan No LT 1214v0 attached and marked **annexure B**. It comprises a portion of Public Street, being a portion of Erf 88342 Cape Town. The said property is registered in the name of Abraham Auret by Deed of Transfer No T288/1886 and vests in the City of Cape Town as Public Street.
- 8.1.2 The evidence submitted by the applicant has been verified by the Property Management Department's Technical Division and was unable to find any evidence to rebut the prescriptive claim. The balcony of the dwelling of the applicant at first floor level encroaches onto the property now claimed by prescription, as shown on the photographs attached as **annexure C**. The said balcony was constructed prior to 1915 as shown on the Attridge's Survey Plan dated 1915 and attached as **annexure D**. The City's Survey sheet dated 1950 also shows the overhanging structure (**annexure E**). The encroachment was also indicated on the Building Plan No 272421 dated 3 October 1974 which was approved by the City (**annexure F**).

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8.1.3 The Department Corporate Services: Legal Services confirmed that, based on the evidence provided to them, the application meets the requirements of both the 1943 and 1969 Prescription Acts as well as the provisions of the State Land Disposal Act No 48 of 1961 as well as the Prescription (Local Authorities) Ordinance 16 of 1964 read with the City of Cape Town Immovable Property By-Law 2015. In light of the above the City may thus admit to the claim of prescription submitted by David Mottershead. A copy of the legal opinion is attached and marked **annexure G**.

8.1.4 Acquiring ownership over movable or immovable property by prescription under South African law is regulated by the Prescription Act of 1969. It general provides that if a person has possessed a property openly, as if he/she were the owner thereof, for an uninterrupted period of thirty years, he/she has acquired ownership thereof by prescription.

Acquisitive prescription over State and Municipal owned land and rights in respect thereof is, however, prohibited with effect from a specified date, respectively in terms of the provisions of the State Land Disposal Act of 1961 and the Prescription (Local Authorities) Ordinance No 16 of 1964.

Section 1 of the Prescription (Local Authorities) Ordinance No 16 of 1964 has relevance and reads as follows:

"1. Prohibition of the acquisition of land of local authorities by prescription; -

Notwithstanding any rule of law to the contrary any land –

- (a) ...
- (b) ...

And any rights in respect of such land shall, after the expiration of a period of ten years from date of promulgation of this ordinance, not be capable of being acquired by any person by prescription"

The Prescription (Local Authorities) Ordinance No 16 of 1964 was promulgated on 7 August 1964.

In addition to the provisions of the aforesaid Ordinance 16 of 1964, section 5 of the City of Cape Town Immovable Property By-Law 2015 Council may, if written proof to its satisfaction is submitted that any person has, prior to the expiration of the period of ten years contemplated by Section 1 of the Prescription (Local Authorities) Ordinance by prescription acquired the ownership of immovable property owned by the municipality or of any right in or over such property, admit or concede any claim to that effect by such person.

As stated under paragraph 8.1.2 above, the claimant in this matter has submitted evidence which has been verified by the Property Management Department's Technical Division. No other evidence was found to rebut the prescriptive claim. The investigation into the claim revealed that the relevant encroachment is shown on the Attridge Survey of 1915 as well as on the City Survey Sheet of 1950. This proves that the encroachment had taken place before the relevant laws placed a prohibition over the acquisition by prescription over municipal owned land.

The Department Corporate Services : Legal Services further confirmed that the application meets the requirements of both the Prescription Acts as well as the requirements laid down by the State Land Disposal Act and the Prescription (Local Authorities) Ordinance No 16 of 1964. The prescriptive claim can thus be admitted.

8.1.5 The matter was tabled for consideration by Subcouncil 19 at the meeting held on 18 January 2016 and was supported in terms of Resolution No 19SUB23/1/2016 (annexure A).

## 8.2 CONSULTATION WITH BRANCHES:

The application was not circulated to the relevant service branches of Council due to the nature of the application.

## 8.3 FACTORS MOTIVATING RECOMMENDATION:

The facts of the claim submitted and as verified by the Property Management Department's Technical Division constitute sufficient evidence to the satisfaction of the Council to admit to the claim of acquisitive prescription.

## 8.4 PUBLIC PARTICIPATION

Not applicable due to the nature of the claim

## 8.5 VALUATION

Not applicable due to the nature of the claim

## 8.6 VAT

Not applicable due to the nature of the claim

## 8.7 BLACK ECONOMIC EMPOWERMENT (BEE) STATUS

Not applicable due to the nature of the claim

## 8.8 CONSTITUTIONAL AND POLICY IMPLICATIONS

The recommendations comply with the provisions of Sections 4 and 5 of the City of Cape Town Immovable Property By-Law 2015, read with Section 1 of the Prescription (Local Authorities) Ordinance No 16 of 1964.

**8.9 FINANCIAL IMPLICATIONS**

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

**8.10 TAX COMPLIANCE**

Not applicable due to the nature of the claim.

**8.11 FINANCIAL DUE DILIGENCE**

Not applicable due to the nature of the claim.

**8.12 SUSTAINABILITY IMPLICATIONS**

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

**8.13 LEGAL IMPLICATIONS**

Section 5 of the City of Cape Town Immovable Property By-Law 2015, read with Section 1 of the Prescription (Local Authorities) Ordinance No 16 of 1964 authorise Council to admit or concede a prescriptive claim.

**Regulation 7 of MATR**

As required in terms of Regulation 7 of the Municipal Asset Transfer Regulations (MATR), Council must take into account the following **factors** when considering any proposed transfer or disposal of non-exempted capital assets and it is herein confirmed that:

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

Not applicable due to the application being a Prescriptive Claim.

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

There is no expected loss or gain due to the nature of the claim.

**Factor C:** 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 no financial benefit

THH

**Factor D:** 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.

**Factor E:** 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.

**Factor F:** 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 conditions in respect of Erf 88327 Cape Town, the claimant's property, will apply.

**Factor G:** The estimated cost of the proposed transfer or disposal.

The claimant will be responsible for the transfer and related costs.

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

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

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

Not applicable, as the purpose of the report seeks to recommend that Council admit to the acquisition of the prescriptive claim.

**Factor J:** 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. National and Provincial Treasury were not informed of the proposed disposal due to the nature of the claim.

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

Not applicable.

**Factor L: Compliance with the Legislative regime applicable to the proposed transfer or disposal.**

- Section 5 of the City of Cape Town Immovable Property By-Law 2015 permits the acquisitive prescriptive claim of immovable Property.
- 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

Should the recommendations contained in this report be adopted by Council, the following statutory processes will need to be undertaken:

- The property will have to be sub-divided from the parent property
- The property will have to be registered in the name of the City of Cape Town in terms of Section 31 of the Deeds Registries Act No 47 of 1937
- The property will have to be consolidated with the applicant's adjacent Erf 88327 Cape Town to form a single land holding.

#### 8.14 STAFF IMPLICATIONS

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

No            X

Yes

#### ANNEXURES

- Annexure A - Subcouncil Resolution No 19SUB23/1/2016
- Annexure B - Plan No LT 1214v0
- Annexure C - Photographs of encroachment
- Annexure D - Attridge Survey Plan of 1915
- Annexure E - City's Survey Sheet dated 1950
- Annexure F - Approved Building Plan No 272421 dated 3 October 1974
- Annexure G - Legal Opinion

OR FURTHER DETAILS CONTACT:

|                           |                                    |
|---------------------------|------------------------------------|
| NAME                      | Wilson Baartman (Gerda du Plessis) |
| CONTACT NUMBERS           | 021 444 2595                       |
| E-MAIL ADDRESS            | Susarah.duplessis@capetown.gov.za  |
| DIRECTORATE               | Finance                            |
| FILE REFERENCE            | S14/3/8/3/8/00/88327               |
| MANAGER: PROPERTY HOLDING | Stu Mackenberg                     |

*Gerda du Plessis*  
 DIRECTOR: PROPERTY MANAGEMENT IN HER  
 CAPACITY AS CFO NOMINEE

NAME RUBY GELDERBLOEM

DATE 2016-02-18

Comment:  
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 \_\_\_\_\_

*Joan-Mari Holt*  
 LEGAL COMPLIANCE

NAME Joan-Mari Holt

TEL 021 400 2753

DATE 18/03/2016

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

Comment:  
 \_\_\_\_\_  
 Certified as legally compliant: JMH  
 Based on the contents of the report.