



16 SUB 11/10/2022

07 October 2022

Subcouncil 16
11th Floor 44
Wale Street
Cape Town
8000

Dear Sir / Madam

PROPOSED LEASE OF CITY LAND, PUBLIC PASSAGE, A PORTION OF ERF 95 GREEN POINT, SITUATED AT OFF OCEAN VIEW DRIVE, GREEN POINT, FOR GARDENING AND SECURITY PURPOSES: CAVALETTO 99 PROP LTD & PROPOSED LEASE OF CITY LAND BEING A PORTION OF PUBLIC PASSAGE, A PORTION OF ERF 95 AND 96 GREEN POINT, SITUATED AT SPRINGBOK ROAD, GREEN POINT, FOR GARDENING AND SECURITY PURPOSES: JUSTIN ROHLOFF

We refer to the above two lease applications for Cavaletto 99 Prop Ltd & Justin Rohloff.

Please be advised that Subcouncil 16 can remove these two applications from their agenda.

Environmental and Roads objected against these lease applications. Thereafter, Environmental changed their comment and supported a short term lease.

However, Roads' objection still stands and they are busy with legal action against the applicants for the illegal building work constructed within the lane.

The applications were informed and they need to liaise directly with the Roads department. We haven't received any feedback from the applicants herein.

Therefore, we are not proceeding with the applications at this stage. In the event that the applicants do wish to proceed, we would recommend that the applications should be refused. However, nothing is forthcoming from the applicants at this stage.

Yours faithfully

Per PJ Kotze

For **DIRECTOR: PROPERTY MANAGEMENT**



REPORT TO SUBCOUNCIL 16

1 **ITEM NUMBER** 16 SUB 11/10/2022

2 **SUBJECT**

PROPOSED LEASE OF CITY LAND BEING A PORTION OF PUBLIC PASSAGE, A PORTION OF ERF 95 AND 96 GREEN POINT, SITUATED AT SPRINGBOK ROAD, GREEN POINT, FOR GARDENING AND SECURITY PURPOSES: JUSTIN ROHLOFF

ONDERWERP

VOORGESTELDE VERHURING VAN STADSGROND NAAMLIK 'N GEDEELTE VAN OPENBARE STEEG, 'N GEDEELTE VAN ERF 95 EN 96 GROENPUNT, GELEË TE SPRINGBOKWEG, GROENPUNT, VIR TUINMAAK- EN SEKURITEITSDOELEINDES: JUSTIN ROHLOFF

ISIHLOKO

ISIPHAKAMISO SOKUQESHISWA KWESIQEPHU SOMHLABA WESIXEKO OSISIQEPHU ESIYIPASEJI YOLUNTU, ISIQEPHU SEZIZA 95 NO 96 GREEN POINT, EZIKWI SPRINGBOK ROAD, E GREEN POINT, KULUNGISELELWA IMIBANDELA ENGEZASEGADINI NOKHUSELEKO: KU JUSTIN ROHLOFF

N 0472

PTMS NO: 130007149

File Ref No: CT 14/3/6/1/2/2004/07/95

(Category 4)

3 **DELEGATED AUTHORITY**

- ☒ The report is for comment by Subcouncil 16 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.”

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- ☐ 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.

“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 for gardening and security purposes.		
Site extent	39m ²		
Submission date	10 July 2019		
Current zoning	Single Dwelling		
Current usage	Gardening and Security		
Proposed usage	Gardening and Security		
WARD CLLR	NOTICE DATE	WARD	
Cllr. Matthew Kempthorne	22 September 2020	115	
Internal circulation date	27 July 2020		
Internal department comments	Branch comments received and no objections were received.		
Public participation outcome summary	Advertised in the Cape Argus and Die Burger on 22 May 2020. 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			
Factors motivating recommendation:	<ul style="list-style-type: none"> • The leasing of the land will relieve Council of the maintenance burden. • A tariff based income will be generated. • Better utilization of City land. 			
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 Passage, being a portion of erf 95 and 96 Greenpoint situated at Springbok Road, Green Point shown hatched and lettered ABCD on the attached plan STC 3687 marked annexure A, in extent approximately 39m², to Justin Rohloff, owner of Erf 2079 or his successors in title, be approved subject to inter alia the following conditions:

- A tariff rental of R 651.00 per annum including VAT calculated at the rate applicable at the time of transaction be payable. Rates not applicable;
- The lease will endure for a period of ten years, subject to any time two month's notice of termination;
- The rental will be adjusted annually in terms of the rental tariff structure as approved by Council;
- The property be used for gardening and security purposes only;
- Subject to such further conditions to be imposed by the Director: Property Management in terms of his/her delegated authority;
- Subject to compliance with any other statutory requirements;

AANBEVELINGS VIR OORWEGING EN KOMMENTAAR DEUR DIE BETROKKE SUBRAAD

Daar word aanbeveel dat die verhuring van 'n gedeelte van openbare steeg, naamlik 'n gedeelte van erf 95 en 96 Groenpunt, geleë te Springbokweg, Groenpunt gearseer en met die letters ABCD op die aangehegte plan STC 3687, gemerk bylae A, aangetoon, ongeveer 39 m² groot, aan Justin Rohloff, eienaar van erf 2079 of sy regsopvolgers, goedgekeur word, onderworpe aan onder andere die volgende voorwaardes dat:

- a) 'n Tariefhuurbedrag van R651.00 per jaar, BTW bereken teen die koers van toepassing ten tye van die transaksie ingesluit, betaalbaar is. Eiendomsbelasting is nie van toepassing nie;
- b) Die huurooreenkoms vir 'n tydperk van 10 jaar sal duur, onderworpe aan twee maande se kennis van opsegging te eniger tyd;
- c) Die huurgeld 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 wat die direkteur: eiendombestuur ingevolge sy/haar gedelegeerde bevoegdheid oplê;
- f) Onderworpe aan die nakoming van enige ander statutêre vereistes.

IZINDULULO UKUBA ZIQWALASELWE KWAYE KUVAKALISWE ULUVO LIBHUNGANA ELIFANELEKILEYO

Kundululwe ukuba makuphunyezwe uqeshiso lwesiqephu sepaseji yoluntu eziziza 95 no96 eziseSpringbok Road, eGreen Point, ezibonakaliswe ngomzobo nangonobumba abakhulu uABCD kwiplani eqhotyoshelweyo onguSTC 3687, ephawulwe kwisihlomeloA, esibukhulu obumalunga nama39 m², kuJustin Rohloff ongumnini wesiza2079 okanye kongena ezihlangwini zakhe ngokwetayitile, ngokuxhomekeke phakathi kwezinye izinto, ekuthotyolweni kwale miqathango ilandelayo:

- a) Makuhlululwe ixabiso lerenti elingamaR651.00 ngonyaka (kuquka iRhafuntengo) elibalwe ngexabiso elijoliswe kwixesha elo lonaniselwano. IiRhafu zokuhlala azihlawulwa;
- b) Uqeshiso luyakuthi luqhubekke isithuba seminyaka elishumi, ngokuxhomekeke kulo naliphina ixesha ukuya kwisaziso seenyanga ezimbini esingokurhoxiswa kwesivumelwano;
- c) Irenti iyakuthi ilungelelaniswe rhoqo ngonyaka ngokwesakheko samaxabiso serenti njengoko siphunyezwe liBhunga;
- d) Ipropati iyakuthi isetyenziselwe imibandela yezasegadini nokhuseleko kuphela;
- e) Ngokuxhomekeke kulo miqathango ithe xhaxhe eyakuthi inyanzeliswe nguMlawuli woLawulo lwePropati esebenzisa amagunya akhe awagunyazisiweyo;
- f) Ngokuxhomekeke ekuthotyolweni kwayo nayiphina imimiselo engeminye yomthetho.

6 DISCUSSION/CONTENTS

6.1 BACKGROUND:

This is a new application to lease. Justin Rohloff has applied to lease Public Passage, a portion of Erf 95 and 96 Greenpoint, Springbok Road, Green Point for a period of 10 (ten) years for gardening and security purposes.

The proposal was circulated to all relevant branches for comment. No objections were raised by the branches to the proposed lease of the subject property.

This is non-viable City land and is not required for any basic municipal services. During the currency of the lease period the agreement of lease will contain a clause that in the event that Council does require the land, a two months cancellation period will be applied.

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:

Utility Services: Water and Sanitation have no objection subject to the following conditions:

- Access into the area shall be available 24 hours a day to personnel of the Water and Sanitation department.
- The access control system shall be uncomplicated and to the satisfaction of the Water and Sanitation Department in order to provide immediate access to Water and Sanitation personnel, together with all vehicles, and plant as may be required. In addition to vehicular access gates pedestrian gates incorporating water pattern padlocks may be required.
- Where gates are fitted with padlocks the water padlocking system shall be installed at the applicants/owners/residents cost. Details of the lock arrangement may be obtained from the Principle Water Inspector, telephone number (021) 400 6597.
- Notwithstanding the aforementioned, neither the Water and Sanitation Department nor the Council will be liable for any damages or loss if any lock or gate has been forced or broken in order to gain access to attend the burst main, blocked sewers or other emergencies such as inspections that must be carried out, meters that must be read, or any other cause outside the control of the Council.
- The applicants/owners/residents shall bear the cost of the installation of repositioning of any valve, hydrant, meter or other fitting and all protective measures to the water installation that my

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be necessitated by the lease/purchase and servitude of land, or closure of a public street.

- The ground surface over a water or sewer main shall not be altered with in any way except with the prior approval of the Water and Sanitation Department.
- No trees shall be planted within 3m of the water and sewer mains.
- The lease/purchase and servitude/closure shall be subject to the further approval of the Chief Fire Officer and all conditions imposed by him.
- Details of the final proposal shall be submitted to the Water and Sanitation Department for approval prior to closure being affected.
- The applicant shall advise the District Manager of Reticulation in writing not less than 14 days before the area is closed off.

6.3 VALUATION

The application category fits within the tariff structure of the City approved on 26 May 2021;

6.4 CONSTITUTIONAL AND POLICY IMPLICATIONS

6.4.1 The proposal complies with the provisions of Regulation 34 of Chapter 4 of the MATR in that a right to use, control or manage a capital asset may be granted.

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 whose 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 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 not exceed R15 000,00 and as such the requirements for a SARS clearance or exemption certificate is not applicable.

FINANCIAL DUE DILIGENCE

The applicant’s debt profile has been verified and it is confirmed that the debt profile is not in arrears.

6.7 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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6.8 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 R 651.00 per annum including 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.

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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 22 May 2020. Closing dates for objections were 21 June 2020. 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 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.

6.9 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: Plan STC 3687

FOR FURTHER DETAILS CONTACT:

NAME	 DEON FRANKEN
CONTACT NUMBERS	021 400 1047 / 062 670 9551
E-MAIL ADDRESS	DEON.FRANKEN@CAPETOWN.GOV.ZA
DIRECTORATE	ECONOMIC OPPORTUNITIES & ASSET MANAGEMENT
FILE REF NO	CT 14/3/6/1/2/2020/07/710
MANAGER: PROPERTY HOLDING RACHEL SCHNACKENBERG	Rachel Schnackenberg <small>Digitally signed by Rachel Schnackenberg Date: 2021.08.18 19:47:52 +02'00'</small>

Michael Sims
Digitally signed by Michael Sims
Date: 2021.08.23 15:02:39 +02'00'

Comment:

ACTING DIRECTOR : PROPERTY MANAGEMENT IN HIS CAPACITY AS EXECUTIVE DIRECTOR : ECONOMIC OPPORTUNITIES & ASSET MANAGEMENT NOMINEE

NAME MIKE SIMS

DATE

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

☐ NON-COMPLIANT

LEGAL COMPLIANCE

NAME

TEL

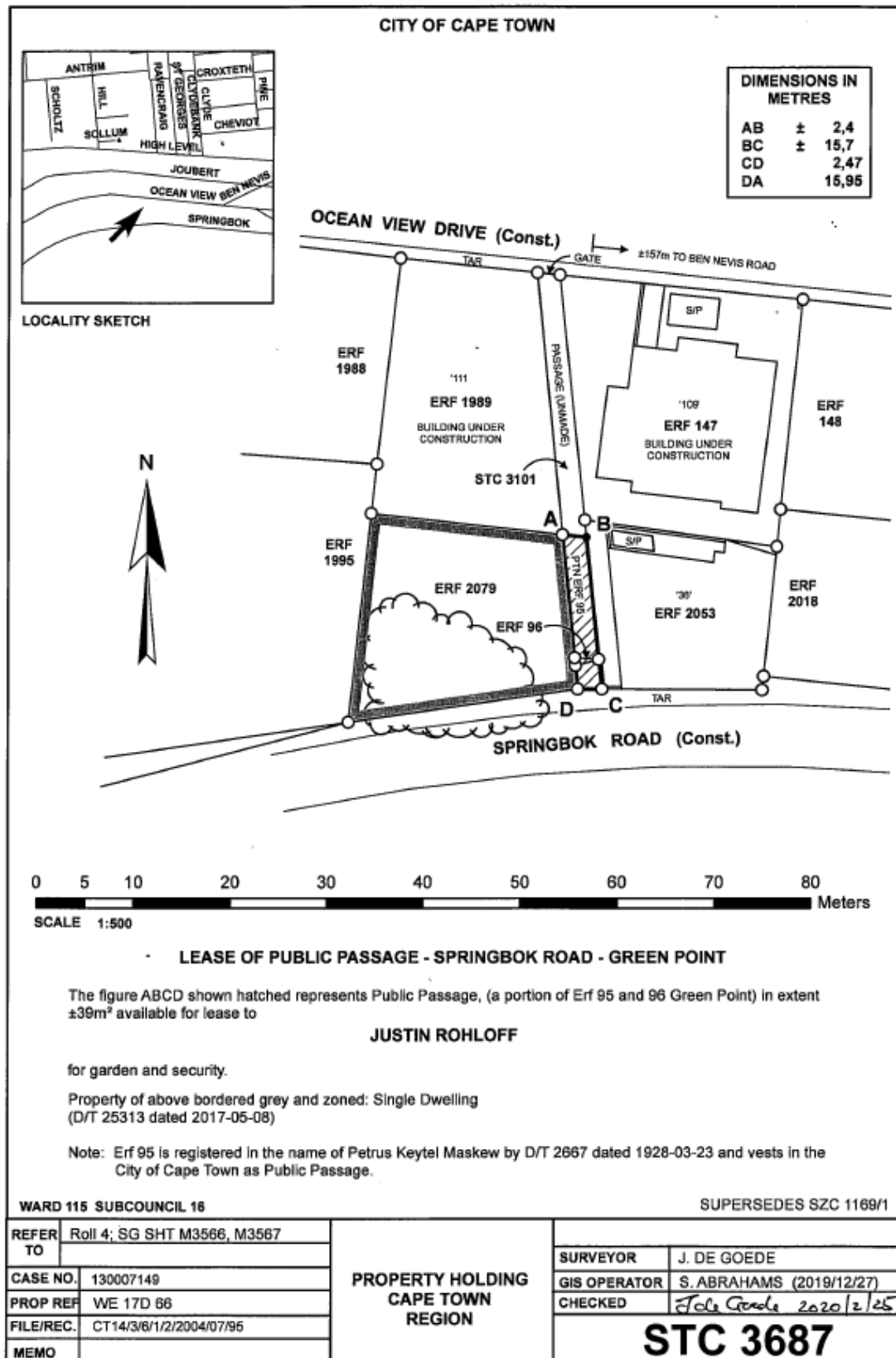
DATE

Sarah Sanders
Digitally signed by Sarah Sanders
Date: 2021.08.24 13:54:46 +02'00'

Comment:

Legally compliant based on the contents of the report

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