



REPORT TO SUBCOUNCIL 24

LC22155

1. ITEM NUMBER **24SUB 30/5/2019**

2. SUBJECT

PROPOSED LEASE OF PORTION OF PUBLIC PLACE, PORTION OF ERF 6507, ADJACENT ERF 6517, ROBIN STREET, SOMERSET WEST: ROBERT MICHAEL FISCHER AND NATASCHA CARMEN FISCHER

2. ONDERWERP

VOORGESTELDE VERHURING VAN 'N GEDEELTE VAN OPENBARE PLEK, GEDEELTE VAN ERF 6507, AANGRENSEND AAN ERF 6517, ROBINSTRAAT, SOMERSET-WES: ROBERT MICHAEL FISCHER EN NATASCHA CARMEN FISCHER

2. ISIHLOKO

ISIPHAKAMISO SOKUQESHISWA KWESIQEPHU SENDAWO YOLUNTU, ESISIQEPHU SESISZA-6507, ESIMELENE NESIZA-6517, ROBIN STREET, SOMERSET WEST: KU-ROBERT MICHAEL FISCHER NAKU-NATASCHA CARMEN FISCHER

K3020

Case ID: 130002809

H14/3/6/1/2/151

(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:

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SUBCOUNCIL 24

SUBRAAD 24

IBHUNGA 24

Acknowledge Receipt

Erken Ontvangs

Isiqinisekiso sokufumaneka

Date/Datum/Urnhlal:

18/04/19

- 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 delegation lies with Director: Property Management

4. EXECUTIVE SUMMARY

PURPOSE OF REPORT	To consider the proposed lease of a portion of public place, erf 6507, adjacent erf 6517 Robin Street, Somerset West to RM Fischer and NC Fischer or their successor in title for gardening and security purposes.		
Site extent	388 m ²		
Submission date	21 September 2017		
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	19 October 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 Stuart Pringle	01 October 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 street, being portion of erf 6507, adjacent erf 6517, situated at Robin Street, Somerset West, shown hatched and lettered ABCD on the attached sketch ET 686 marked annexure A, in extent approximately 388 m², to Robert Michael Fischer and Natascha Carmen Fischer, owners of Erf 6517 or their 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 straat, naamlik 'n gedeelte van erf 6507, aangrensend aan erf 6517, geleë te Robinstraat, Somerset-Wes, gearseer en met die letters ABCD aangetoon op die aangehegte skets ET 686, gemerk bylae A, ongeveer 388 m² groot, aan Robert Michael Fischer en Natascha Carmen Fischer, eienaars van erf 6517, of hulle regsopvolgers, goedgekeur word onderworpe onder meer aan die volgende voorwaardes, dat:

- a) 'n Tariefhuurbedrag van R1671,30 per jaar, BTW bereken teen die koers van toepassing ten tye van die transaksie uitgesluit, betaalbaar is. Eiendomsbelasting nie van toepassing nie;
- 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 wat die direkteur: eiendombestuur ingevolge haar gedelegeerde magtiging oplê;
- f) Onderworpe aan die nakoming van enige ander statutêre vereistes;
- g) Geen vergoeding betaal sal word vir enige verbeterings 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-6507, esimelene nesiza-6517 esise-Robin Street, Somerset West, Somerset West, esibonakaliswe ngomzobo nanganobumba abakhulu u-ABCD kumzobo oqhotyoshelweyo ongu-ET 686, ophawulwe kwisihlomelo-A, esibukhulu obumalunga nama-388 m², ku-Robert Michael Fischer no-Natascha Carmen Fischer, abangabanini besiza-6517 okanye kwabangena ezihlangwini zabo ngokwetayitile, ngokuxhomekeke ekuthotyolweni kwale miqathango ilandelayo, yokuba:

- a) Makuhlawulwe ixabiso lerenti elili-R1 671,30 ngonyaka (ngaphandle kweRhafu-ntengo) ngexabiso elibalwe ngexabiso elijoliswe kwixesha elo lonaniselwano. IiRhafu zokuhlala azihlawulwa;

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- b) Uqeshiso luyakuthi luqhubekeke isithuba seminyaka elishumi kubekho nommiselo wokuhlaziywa eminye iminyaka elishumi;
- 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; Management in terms of her delegated authority;
- 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 6507 abutting erf 6517 situated at Robin Street, Somerset West, shown hatched and lettered ABCD on the attached sketch ET 686 marked annexure A, in extent approximately 388 m², to Robert Michael Fischer and Natascha Carmen Fischer, or their 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 6517 Somerset West, entered into a lease agreement with the erstwhile Somerset West Municipality in respect of portion of Erf 6507 Somerset West for gardening purposes. The lease has since expired and there was a change in ownership to the current applicant who wishes to enter into a new lease in respect of a portion of erf 6507 Somerset West.

The property is non-viable and only the adjacent owner can utilise the property for gardening and security purposes.

The Applicant is currently utilising the subject property 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.

As part of the public participation process a call for comments or objections was advertised. No 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 That no permanent structures will be permitted due to existing water and sewer pipelines on erf 6507, Somerset West.
- 6.2.2 That Council is to have access to the leased portion for maintenance on the existing water and sewer pipelines.
- 6.2.3 That the boundary being fenced in with a permeable fence e.g Palisade fencing.
- 6.2.4 The removal of all alien invasive vegetation (not all exotic species are invasive).
- 6.2.5 Planting of water wise indigenous plants as far as possible.
- 6.2.6 That all or any tree surgery to mature tree to be done in consultation with the Recreation and Parks department: Altus De Wet, tel no 021 4002735.

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 B 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 of NC Fischer attached hereto as Annexure B. The lease Agreement will only be concluded once the Tax Clearance Certificate for Mr Robert Michael Fischer is received.

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

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 comments or 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 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 686

Annexure B: Tax Clearance Certificate – Good Standing

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	H14/3/6/1/2/151
MANAGER: PROPERTY HOLDING RACHEL SCHNACKENBERG	Muackenberg 27-02-2019

J Gelderbloem
**DIRECTOR : PROPERTY MANAGEMENT IN HER
 CAPACITY AS EXECUTIVE DIRECTOR : ECONOMIC
 OPPORTUNITIES AND ASSET MANAGEMENT
 NOMINEE**
 NAME RUBY GELDERBLOEM
 DATE 2019.03.07

Comment:

P Davis
LEGAL COMPLIANCE
 NAME Patricia Davis
 TEL (021) 400-1549
 DATE 15.03.2019

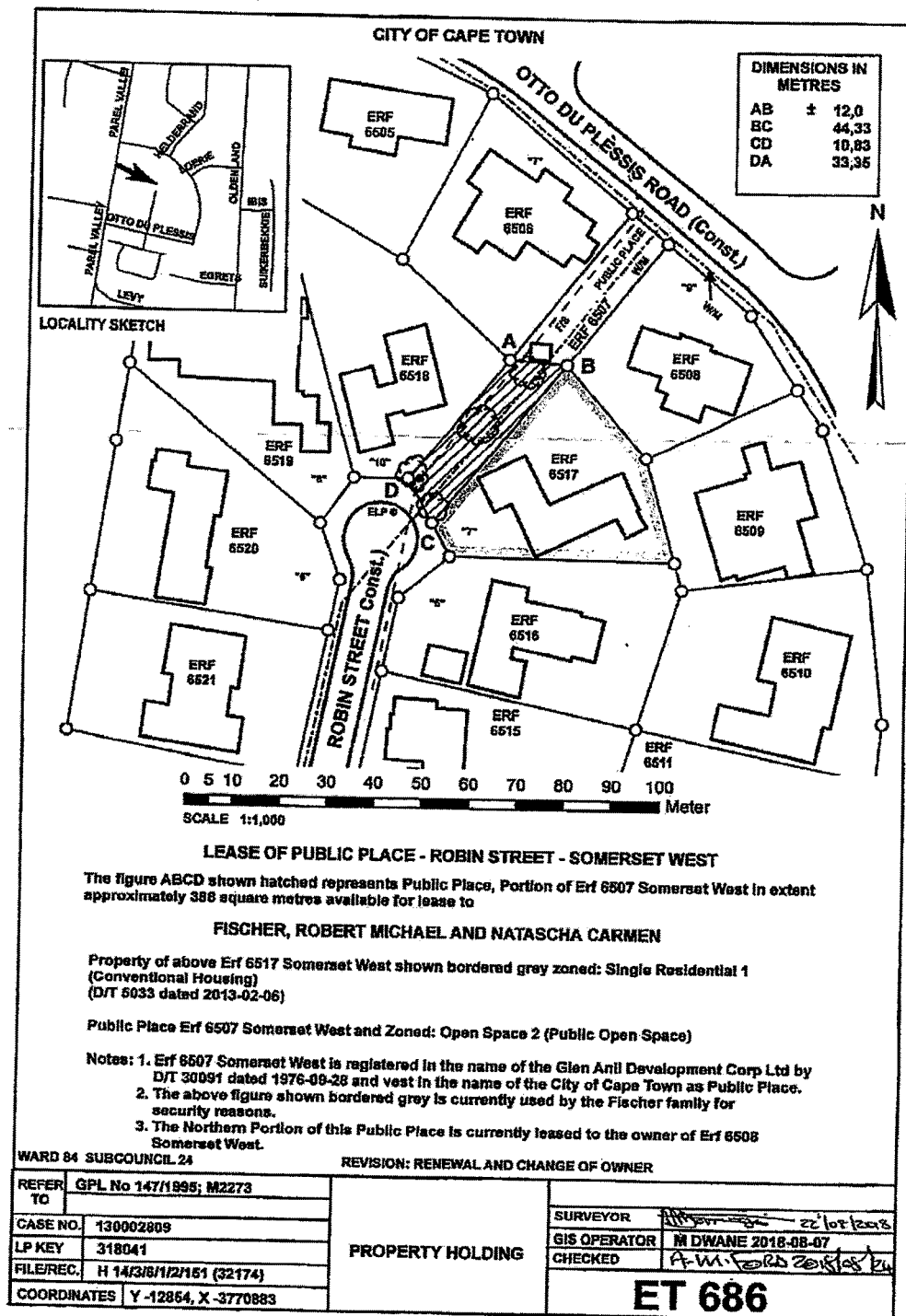
☒ REPORT COMPLIANT WITH THE PROVISIONS OF
 COUNCIL'S DELEGATIONS, POLICIES, BY-LAWS
 AND ALL LEGISLATION RELATING TO THE MATTER
 UNDER CONSIDERATION.

☐ NON-COMPLIANT

Comment:

Certified as legally compliant:

Based on the contents of the report. *P*



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Tax Clearance Certificate Number:
0700/2/2019/A002573957

Tax Clearance Certificate - Good Standing

Enquiries
0800 00 SARS (7277)
Approved Date
2019-01-08
Expiry Date
2020-01-08

Identity number 7503230169084

Income Tax 2986042147
NC FISCHER

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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PLANNING OUR FUTURE CITY TOGETHER

Review of district plans

The City Council approved the revised Municipal Spatial Development Framework (MSDF) in April 2018. The MSDF guides decision-making on the nature, form, scale and location of urban development, land use, the maintenance and development of infrastructure, and the protection of environmental resources. The district plan does not replace the legal requirements for land use planning & environmental regulations.

The City is now reviewing the eight district plans which must give effect to the revised MSDF. These are medium-term (10-year) plans that guide spatial development, land use management, and environmental decisions within each city district. They also inform strategic public and private investment initiatives as well as the development of priorities for more detailed local area planning.

The public and interested and affected parties are invited to participate in this process that will take place over a number of months. Importantly, the district plans only become effective once approved by Council.

The plans are:

- Blaauwberg District Plan
- Cape Flats District Plan
- Helderberg District Plan
- Khayelitsha/Mitchells Plain Greater Blue Downs District Plan
- Northern District Plan
(Durbanville, Kraaifontein, Brackenfell, Bellville north of N1, Joostenbergvlakte, Fisantekraal)
- Southern District Plan
- Table Bay District Plan
- Tygerberg District Plan
(Parow, Goodwood, Bellville south of N1, Kuilsriver, Elsiesriver)

Register your interest:

The City of Cape Town invites citizens, organisations, businesses and interested and affected parties to participate in this planning process. To receive updates about it and opportunities for input please provide your details below:

Name and Surname: _____

Organisation: private _____

Physical address & Suburb: _____

Contact preference: ☐ mobile or ☐ email

Mobile number: _____

Email address: _____

