



REPORT TO SUBCOUNCIL 16

1 ITEM NUMBER 16 SUB 18/09/2021

2 SUBJECT

PROPOSED LEASE OF LEASE OF CITY LAND, PORTION OF PUBLIC STREET, REMAINDER ERF 710 GREEN POINT, LEICESTER GROVE, GREEN POINT FOR GARDENING PURPOSES: MARGOT ANNE SOLOMON

ONDERWERP

VOORGESTELDE VERHURING VAN STADSGROND, GEDEELTE VAN 'N OPENBARE STRAAT, RESTANT ERF 710 GROENPUNT, LEICESTER GROVE, GROENPUNT VIR TUINMAAKDOELEINDES: MARGOT ANNE SOLOMON

ISIHLOKO

ISIPHAKAMISO SOKUQESHISWA NGOKUTSHA KWENGQESHISO YOMHLABA WESIXEKO, ISIQEPHU SESITALATO SOLUNTU, INTSALELA YESIZA 710 GREEN POINT, LEICESTER GROVE, EGREEN POINT KULUNGISELELWA IMIBANDELA YEGADI: KUMARGOT ANNE SOLOMON

M 3450

PTMS NO: 13000 8235

File Ref No: CT 14/3/6/1/2/2020/07/710

(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.”

- ☐ 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 purposes.			
Site extent	7m ²			
Submission date	23 July 2020			
Current zoning	General Residential 4			
Current usage	Gardening			
Proposed usage	Gardening			
WARD CLLR	NOTICE DATE		WARD	
Cllr. Ian McMahon	11 January 2021		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	

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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 street, being remainder erf 710 Green Point situated in Leicester Grove, Green Point shown hatched and lettered ABCD on the attached plan STC 3622v1 marked annexure A, in extent approximately 7m², to Margot Anne Solomon, owner of Erf 1721 or her 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 purposes only;
- Subject to such further conditions to be imposed by the Director: Property Management in terms of 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 openbare straat, naamlik restant erf 710 Groenpunt, geleë in Leicester Grove, Groenpunt, aangetoon deur arsering en die letters ABCD op die aangehegte plan STC 3622v1, gemerk bylae A, ongeveer 7 m² groot, aan Margot Anne Solomon, eienaar van erf 1721 of haar regsopvolgers, goedgekeur word onderworpe onder meer aan die volgende voorwaardes dat:

- Tariefhuurgeld van R651 per jaar, BTW ingesluit, bereken teen die koers wat ten tye van die transaksie geld, betaalbaar is. Eiendomsbelasting is nie van toepassing nie;

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- b) Die huurooreenkoms vir 'n tydperk van 10 jaar sal duur, onderworpe aan twee maande se kennis van opsegging te enige tyd;
- c) Die huurbedrag jaarliks aangepas word volgens die huurtariefstruktuur soos deur die Raad goedgekeur;
- d) Die eiendom slegs vir tuinmaakdoeleindes gebruik word;
- e) Onderworpe aan enige verdere voorwaardes wat die direkteur: eiendomsbestuur ingevolge 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 ingqeshiso ngesiqephu sesitalato soluntu intsalela yesiza 710 eGreen Point, esime eLeicester Grove, eGreen Point, esibonakaliswe ngemigca ekrweliweyo noonobumba abakhulu ABCD kwiplani eqhotyoshelweyo enguSTC 3622v1, ephawulwe isihlomelo A, esibukhulu obumalunga ne7m², kuMargot Anne Solomon, ongumnini wesiza 1721 okanye abangena ezihlangwini zakhe ngokwetayitile, ngokuxhomekeke phakathi kwezinye izinto kule miqathango ilandelayo:

- a) Makuhlululwe ixabiso lerenti elingama 651.00 ngonyaka kuquka iRhafuntengo ebalwe ngokwexabiso elisetyenziswayo ngexesha lonaniselwano. lintlawulo zobuhlali azisebenzi;
- b) Ingqeshiso izakuhlala isithuba seminyaka elishumi, ngokuxhomekeke nangeliphi na ixesha ukuya kwinyanga ezimbini zokupheliwa kwayo.
- c) Ixabiso lerenti liyakuthi lilungelelaniswe rhoqo ngonyaka ngokungqinelana nesakheko samaxabiso njengoko siphunyezwe liBhunga;
- d) Ipropati iyakuthi isetyenziselwe imibandela yegadi kuphela;
- e) Ngokuxhomekeke kweminye imiqathango eyongeziweyo eya kumiselwa nguMlawuli woLawulo lwePropati ngokwamagunya wakhe awagunyaziselweyo;
- f) Ngokuxhomekeke ekuthotyelweni kwayo nayiphina imimiselo yomthetho engeminye;

6 DISCUSSION/CONTENTS

6.1 BACKGROUND:

Margot Anne Solomon, owner of Erf 1721 Green Point, entered into an encroachment permit with the City of Cape Town in October 2003 for the use of Public Street, being a portion of remainder Erf 710 Green Point, Leicester Grove, Green Point. The encroachment permit has since expired and was tacitly extended to continue on a month to month basis in order to perpetuate billing. The applicant applied for a new lease for a 10 year period for gardening 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:

Electricity Generation and Distribution branch have no objection subject to the following conditions:

- 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.
- Electrical infrastructure may exist on the property or in its vicinity. A wayleave shall be obtained from the Electricity Generation and Distribution Department before any excavation work may commence. In this regard, please contact the Drawing and Record Centre office on telephone (021) 444 2146 or on DavidB.Smith@capetown.gov.za.

Open Serve infrastructure will be affected and the following conditions are to apply:

- Telecommunication services position is shown as accurately as possible but should be regarded as approximate only.
- Should alterations or relocation of existing infrastructure be required, such work will be done at the request and cost of the applicant.

- No mechanical plant or vibrator type compactors may be used within three meters of any Open Serve plant (I.E. any Telecommunication equipment above or below ground leve.)
- The position of their plant affected by the proposal is indicated as approxiamite and Billy February at telephone number (021) 710 6104 or 081 363 7849 must be contacted at least 48 hours prior to commencement of the work, upon which the actual location of Open Serve plant will be indicated on-site.
- A written request must be submitted to Open Serve for consideration should the applicant require their plant to be relocated. The cost of such a relocation will be recoverable from the applicant.
- It is the responsibility of the applicant to verify the existence of the indicated plant and to notify Open Serve immediately should the applicant locate any Open Serve plant which is not indicated on the plans.
- Should the applicant expose any Open Serve plant, the safeguard thereof will be the applciants full responsibility.
- Failing to comply with the above conditions or any special conditions addendum hereto will be regarded as gross negligence and the applicant will be responsible for and damage or loss as a result thereof.
- All Open Serve rights remain reserved.

6.3 VALUATION

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

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

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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."

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

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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.

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 ☐

6.11 POPIA COMPLIANCE

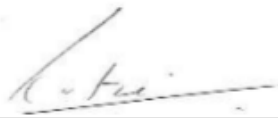

- ☒ It is confirmed that this report has been checked and considered for POPIA Compliance.

POPIA allows the processing of personal information where it is necessary to comply with an obligation that is imposed by law[sec 15(3)(b)]. The inclusion of the applicant's details is an essential element of the a lease/sale.

ANNEXURES

Annexure A: Plan STC 3622v1

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: 2021.05.12 17:55:56 +02'00'</small>

Andre Human 
Digitally signed by Andre Human
Date: 2021.05.13 11:23:54
+02'00'


Comment:

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

NAME ANDRE HUMAN

NAME _____

DATE _____

 Digitally signed by
Jason Sam Liebenberg
Date: 2021.09.16
15:01:07 +02'00'

☐ 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 _____

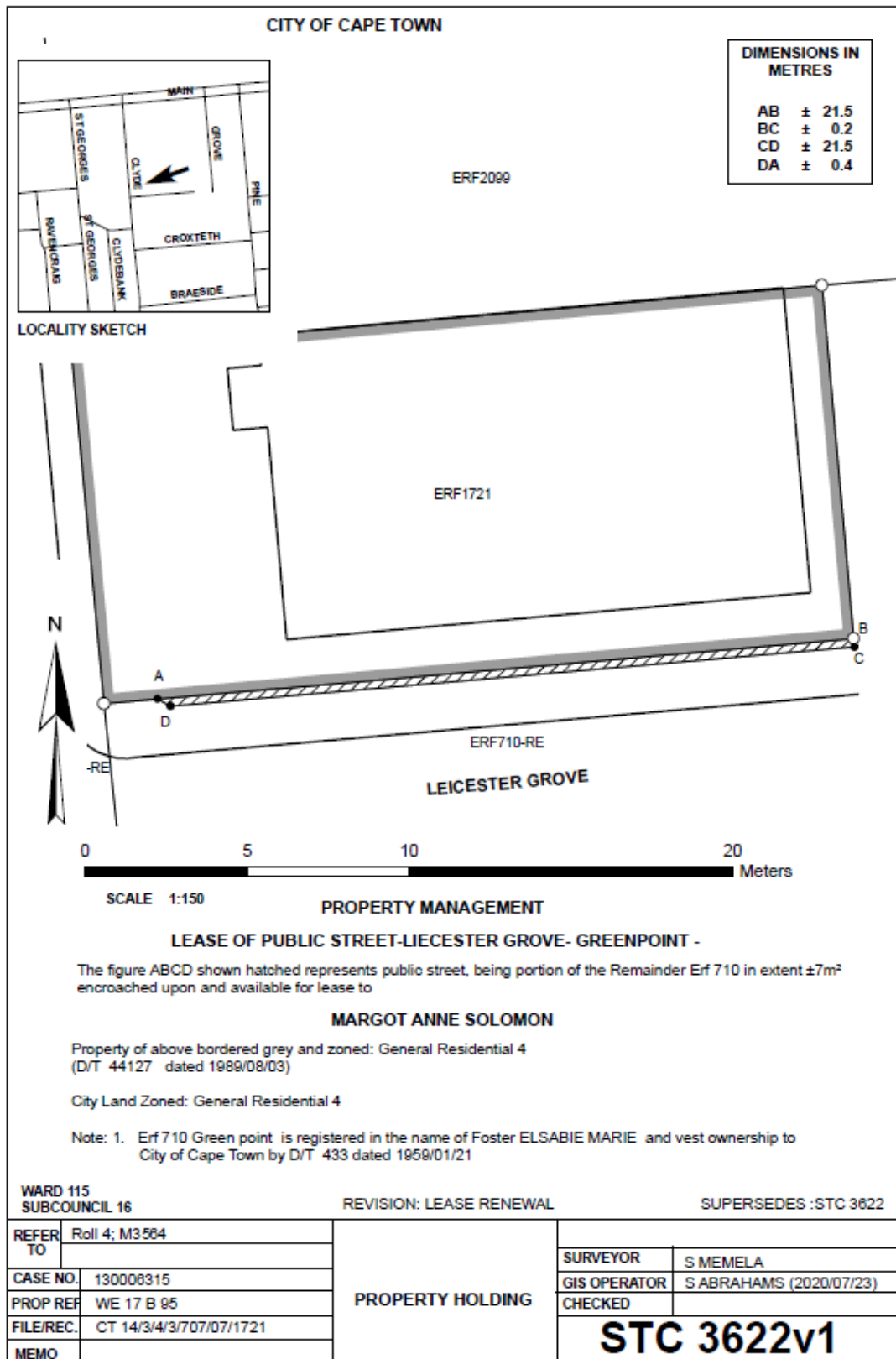
DATE _____

Comment:

Certified as legally compliant based on the contents of the report

Note: Paragraph 6.10 titled "POPIA Compliance"
erroneously refers to section 15(3)(b) of the Act. It
should refer to section 15(3)(c)(ii).

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