



## REPORT TO SUBCOUNCIL 10

Lc22525

### 1 ITEM NUMBER :

### 2. SUBJECT

**PROPOSED LEASE OF CITY LAND, ERF 42583 CORNER OF MALANDALAHLA AND SIVIVANE CRESCENTS, KHAYELITSHA: MASANDE EDUCARE CENTRE**

### 2. ONDERWERP

**VOORGESTELDE VERHURING VAN STADSGROND, ERF 42583, HOEK VAN MALANDALAHLA- EN SIVIVANESINGEL, KHAYELITSHA: MASANDE-LEERSORGSENTRUM**

### 2. ISIHLOKO

**ISIPHAKAMISO SOKUQESHISWA KOMHLABA WESIXEKO, OSISIZA- 42583 KWIKONA YEMALANDALAHLA NESIVIVANE CRESCENTS, EKHAYELITSHA: KWABEMASANDE EDUCARE CENTRE**

K4129

Case ID: 130000568

T/CO14/2/2/1/1/291

(Category 3)

### 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 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.

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- 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 application to lease city land, erf 42583, corner of Malandalahla and Sivivane Crescents, Khayelitsha to Masande Educare Centre		
Site extent	942 m <sup>2</sup>		
Submission date	05 October 2015		
Current zoning	Community 2 (Regional)		
Current usage	Social (Education – Educare Centre)		
Proposed usage	Social (Education – Educare Centre)		
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 <sup>2</sup> 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	29 October 2015		
Internal department comments	No objections subject to certain conditions.		
Public participation outcome summary	Advertised in the Cape Argus and Die Burger on 07 September 2018. No comments, objections or alternative proposals were received.		
WARD CLLR	NOTICE DATE		WARD
CLlr Danile Khatshwa	27 August 2018		96
Viable	Yes	x	No
	Viable immovable property is deemed to be property that can be developed and function as a separate entity and can be registered as a separate entity by the Registrar of Deeds.		
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		
Factors motivating recommendation:	<ul style="list-style-type: none"> <li>The leasing of the property will relieve Council of the maintenance burden.</li> <li>Tariff related rental income will be generated.</li> <li>Better utilization of City property.</li> <li>The community will benefit from the use of the property.</li> </ul>		

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Strategic intent	<b>SFA 1 : an OPPORTUNITY City of Cape Town</b>	
	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	Provision of a school – Early Learning Centre

**5. RECOMMENDATIONS FOR CONSIDERATION AND COMMENT BY THE RELEVANT SUBCOUNCIL**

It is recommended that the lease of erf 42583 corner of Malandalahla and Sivivane Crescents, Khayelitsha, shown bordered grey and lettered ABCDE on the attached sketch ET 504 marked annexure A, in extent approximately 942 m<sup>2</sup>, to Masande Educare Centre, or their successors in title, be approved subject to inter alia the following conditions, that:

- a) A tariff rental of R883,48 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 social (early learning and creche) 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.

**5. AANBEVELINGS VIR OORWEGING EN KOMMENTAAR DEUR DIE BETROKKE SUBRAAD**

Daar aanbeveel word dat die verhuring van erf 42583, geleë op die hoek van Malandalahla- en Sivivanesingel, Khayelitsha, met grys omlyn en aangetoon met die letters ABCDE op die aangehegte skets ET 504, gemerk bylae A, ongeveer 942 m<sup>2</sup> groot, aan Masande-leersorgsentrum of hulle regsopvolgers, goedgekeur word, onderworpe aan, onder meer, die volgende voorwaardes dat:

- a) 'n Tariefhuurbedrag van R883,48 per jaar, BTW uitgesluit bereken teen die koers van toepassing ten tye van die transaksie, betaalbaar is. Eiendomsbelasting nie van toepassing nie;

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- b) Die huurooreenkoms vir 'n tydperk van tien (10) jaar sal geld met die keuse om vir 'n verdere tien (10) jaar te hernieu;
- c) Die huurbedrag jaarliks aangepas sal word volgens die huurtariefstruktuur soos deur die Raad goedgekeur;
- d) Die eiendom slegs vir maatskaplike doeleindes (vroekindontwikkeling en creche) 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 ukuqeshiswa kwesisiza-42583, kwikona yeMalandalahla neSivivane Crescents, eKhayelitsha, esibonakaliswe ngomzobo nangoonobumba abakhulu u-ABCDE kumzobo oqhotyoshelweyo ongu-ET 504, ophawulwe isihlomelo-A, esibukhulu obumalunga nama-942 m<sup>2</sup>, kwabeMasande Educare Centre, okanye kwabangena ezihlangwini zabo ngokwetayitile, ngokuxhomekeke ekuthotyelweni kwale imiqathango ilandelayo yokuba:

- a) Makuhlululwe ixabiso larenti elingama-R883,48 ngonyaka (ngaphandle kweRhafu-ntengo) elibalwe ngexabiso elijoliswe kwixesha elo lonaniselwano, liRhafu zokuhlala azihlawulwa;
- b) Uqeshiso luyakuthi luqhubekke isithuba seminyaka elishumi (10) apho kuyakuthi kubekho ummiselo wokuhlaziya kweminye iminyaka elishumi (10);
- c) Irenti iyakuthi ilungelelaniswe rhoqo ngonyaka ngokwesakheko samaxabiso serenti njengoko siphunyezwe liBhunga;
- d) Ipropati kufuneka isetyenziselwe kwimibandela yezentlalo kuphela (imfundo yabancinane/abaqalayo nekritshi);
- e) Ngokuxhomekeke kweminye imiqathango eyakuthi inyanzeliswe nguMlawuli woLawulo lwePropati esebenzisa amagunya akhe awagunyaziselweyo;
- f) Ngokuxhomekeke ekuthotyelweni kwayo nayiphina imimiselo engeminye yomthetho;
- g) Akukho mbuyekezo iyakuthi ihlawulwe ngalo naluphina uphuculo oluthe lwenziwa kwipropati;

*JMA*

## **6. DISCUSSION/CONTENTS**

### **6.1 BACKGROUND:**

An application was received for the lease of city land, erf 42583 corner of Malandalahla and Sivivane Crescents, Khayelitsha, shown bordered grey and lettered ABCDE on the attached sketch ET 504 marked annexure A, in extent approximately 942 m<sup>2</sup>, to Masande Educare Centre, or their successors in title for the lease of the aforementioned property for social (educare) purposes for a period of ten (10) years with an option to renew for a further period of ten (10) years.

The Applicant previously entered into a lease agreement with the City of Cape Town in respect of portion of city land situated on Erf 42583 corner of Malandalahla and Sivivane Crescents, Khayelitsha commencing January 2005. The lease has since expired but the applicant has continued to lease the property on a month to month basis in terms of the legal principle of tacit relocation. The applicant wishes to enter into a new lease agreement. The applicant has maintained the subject property to the satisfaction of the City of Cape Town.

The Applicant is currently in occupation of the subject property since January 2002 and has maintained it to the satisfaction of the City of Cape Town and meets all the requirements in terms of 12.5.1. of 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) as discussed in 6.4.2 of the report.

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 alternative proposals in terms of Clause 12. 5 of the Policy on the Management of certain of the City of Cape Town's Immovable Property was advertised. Alternative proposals were called for and no comments or any 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 all new development proposals on the property, subsequent to the proposed lease, be submitted to the Department: transport for evaluation and approval in terms of vehicular access points and on-site parking requirements.
- 6.2.2 The refuse generated on the premises must be stored on the premises to the satisfaction of the Director: Solid Waste Management.
- 6.2.3 That the premise comply with the NBR and By-Law Relating to Community Fire Safety, and any other applicable legislation.

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- 6.2.4 That no structure be constructed over any municipal service and that a servitude, with a minimum width of 3,0 m, be registered over such a service. This is for the cost of the applicant.
- 6.2.5 The Educare will have to be registered with the Provincial Department of Social Development.
- 6.2.6 That the site retains its community facilities zoning and that any intention to develop the property is consistent with the parameters of the Zoning Scheme and Urban Design Policy 2013.
- 6.2.6 That the existing structures are formalised over a period of 5 years and that building plans are submitted to PBDM for approval. These plans must comply with the Urban Design Policy 2013.

### 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 R883,48 excluding VAT calculated at the rate applicable at the time of transaction, 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 portion of building is not required for the provision of the minimum level of a basic municipal service.
- 6.4.2 Chapter C 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.

Paragraph 12.5.1. of the Policy is quoted, as follows:

Social care properties / Community sport properties

In exceptional circumstances where a Property, to be used for a social care / community sport purposes, has not been reserved in accordance with the processes provided for in Chapter C of this policy, and where the City's Property Management Department receives an unsolicited application for Property Transaction, then the following factors may be taken into account in justifying not following a competitive bidding process-

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Whether the applicant has historically enjoyed a Property Right granted by the City and, if so, how long;

The applicant, Masande Educare Centre is currently still in occupation of the said city property since January 2002. They submitted an application to enter into a new lease agreement with the City of Cape Town for a period of ten (10) years with an option to renew for a further period of 10 years.

The terms and conditions of such lease;

A lease for a period of ten (10) years with an option to renew for a further ten (10) years at a rental of R883,48 per annum excluding VAT calculated at the rate applicable at the time of transaction be payable. Rates not applicable.

The exact nature of the social care or community purposes;

The property will be utilized for social care (educational – educare) purposes only.

Whether the applicant in the past made improvements to the property and, if so, the value of such improvements;

During a site inspection (02.08.2017) on the premises, it was confirmed that a structure was erected on the property by the applicant with a container at the back. It cannot be determined what the value of the structure is, but it is a well maintained brick and mortar building.

Whether or not the City is satisfied with the manner in which the applicant gives effect to the social care or community purpose;

The City is satisfied that the property will be used by the local community and will have beneficial advantages for both the City and the community.

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

#### **6.7 FINANCIAL DUE DILIGENCE**

The applicant's debt profile has been verified and it is confirmed that they are 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 R883,48 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.

### **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 Times and Die Burger on 07 September 2018. Closing dates for objections were 08 October 2018. 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 or alternative proposals 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, objections or alternative proposals 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 Lease**

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: Plan ET 504

Annexure B: Certificate of Registration as Non-Profit Organization

*JMH*

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	T/CO14/2/2/1/1/291
MANAGER: PROPERTY HOLDING RACHEL SCHNACKENBERG	Mumackenberg 17-04-2019

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

NAME RUBY GELDERBLOEM

DATE 2019.04.25

Comment:

Gulub  
 LEGAL COMPLIANCE

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

☐ NON-COMPLIANT

NAME Joan-Mari Holt

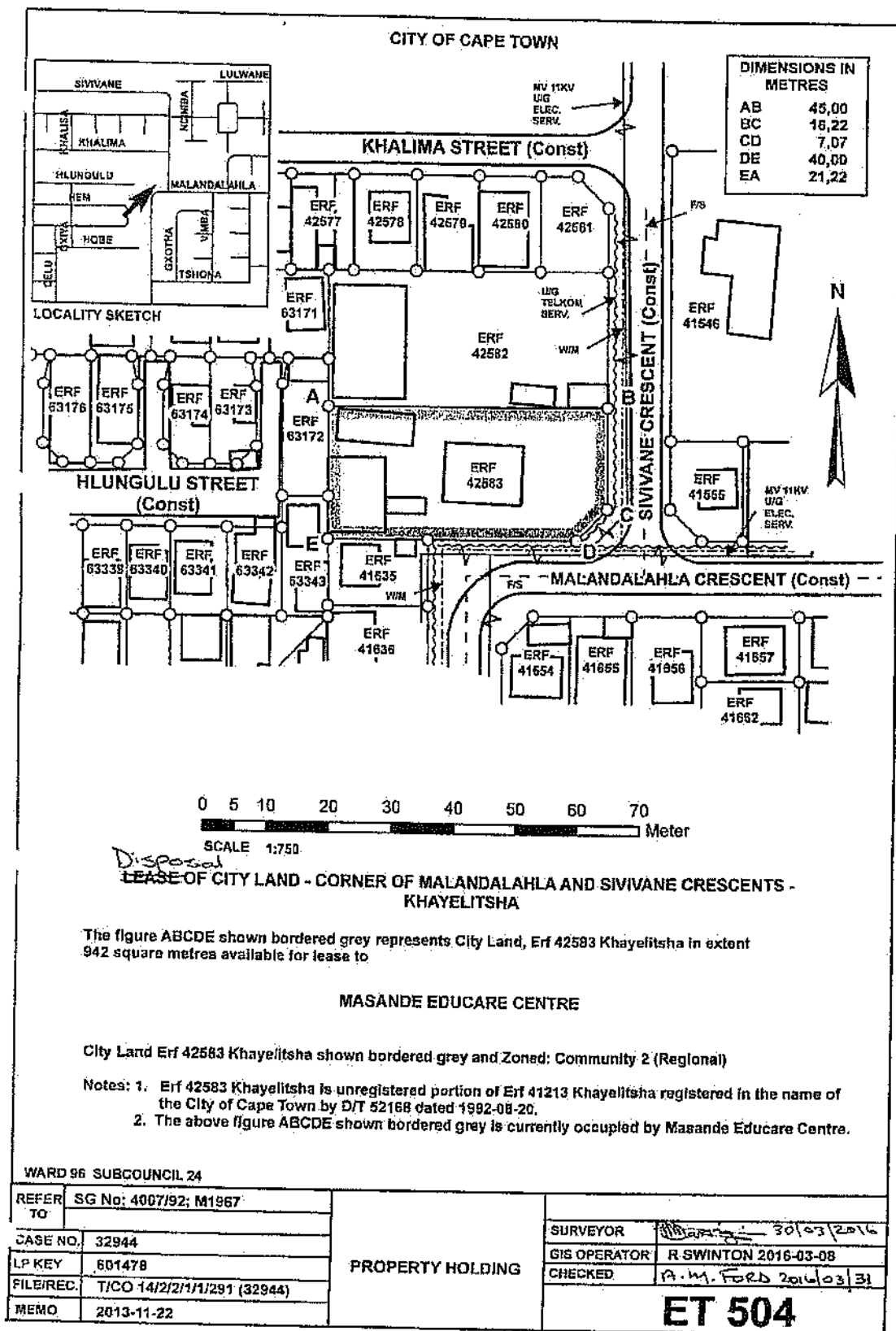
TEL 021 400 2753

DATE 10/05/2019

Comment:

Assessed as legally compliant: JMH  
 Based on the contents of the report.

## ANNEXURE A



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**CERTIFICATE OF REGISTRATION OF  
NONPROFIT ORGANISATION**

In terms of the Nonprofit Organisations Act, 1997, I am satisfied that.....  
**Masande Educare Centre**  
*(Name of the nonprofit organisation)*

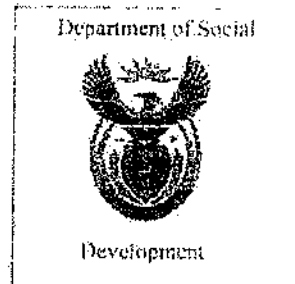
.....  
is the duly authorised representative for registration

The said nonprofit organisation was entered into the register on .. **12 May 2004** ..  
*(Date)*

.....  
is the registered manager

**of (Name of NPO)**

.....  
Signature .....  
**12 May 2004**



## REPORT CHECKLIST FOR BEFORE UPLOADING TO PH REPORT TRACKER

Region: East Region PTMS No: 130000568 Date: 15.04.2019

PTMS - Leasing ☒ PTMS - Tenanting ☐ PTMS - Conveyancing ☐ PTMS - Reservation ☐

Type of Report

SC	IPAC	MAYCO/ COUNCIL	RESERV	CM	Other:	
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Please tick the below column.

Description	Action	Author	SH	RH
ATA	Never attach the ATA to a report, refer to date approved by delegated authority and ensure using the correct delegation as per the date of the ATA.	✓	✓	✓
Amount in Transfers	For transfers, when quoting the amount in the Executive Summary, always include the escalation paragraph as well as any reference to the amount within the report.	✓	✓	✓
Annexures	All annexures attached.	✓	✓	✓
Applicant Name	• In-Principle reports - Not in Subject (Page 1).	✓	✓	✓
	• Other reports - Quoted in full.	✓	✓	✓
Call for proposals	Comment to be included in the report.	✓	✓	✓
Closure reports	Advert to be attached to the report.	✓	✓	✓
Delegations	• Applicable delegation to be quoted.	✓	✓	✓
	• Ensure the correct delegation is being used. For example, IPAC is Part 42 and not Part 41	✓	✓	✓
	• Should be final decision and not delegation.	✓	✓	✓
	• Tick only the relevant box	✓	✓	✓
Deviation	Do not just rely on clause 13.2 but the particular sub clause. Content needs to be clear on reasoning			
Form that is completed when uploading to the PH Report Tracker		✓	✓	✓
IPAC Approval	Attach SC resolution not full report			
Objections	• Check that the Executive summary and reference to objections in the report align as well as under Internal Departments. The report must be clear whether any comments and objections were received.	✓	✓	✓
	• Check that the Executive summary and reference to objections in the report align as well as under National and Provincial Treasury. The report must be clear whether any comments/objects were received.	✓	✓	✓
	• Check that the Executive summary and reference to objections in the report align as well as under Stakeholder comments and recommendations. The report must be clear whether any comments/objects were received.	✓	✓	✓
	• If there are certain conditions indicated, ensure this is added within the report. This would not form part of the recommendations.	✓	✓	✓
	• If any objections from public, An explanation from Property Management with regard to why the objections have not been upheld.	✓	✓	✓
Signature Page	Correct signature page as well as Economic Opportunities & Asset Management.	✓	✓	✓

Description	Action	Author	SH	RH
Sketch plan	• Check sketch name is correct in recommendation and annexures	✓	✓	✓
	• No reference to region	✓	✓	✓
Social Care/ Legal Entity	Need to ensure that the NPO and/or NGO and/or Legal Entity number (registration, company) is reflected when referring to the applicant as well as a certificate confirming status for NPO/NGO must be attached to the report.	✓	✓	✓
Tariff date	Check if the date is correct - 30 May 2018	✓	✓	✓
Tax Clearance Certificate	• Using the correct tax clearance paragraph.	✓	✓	✓
	• Ensure valid tax clearance certificate is attached to the report.			
	• The tax clearance certificate is only required for IPAC when it is for Final IPAC approval.			
	• With regard to tariffs, if the lease period value exceeds R15 000, then a tax clearance certificate is required. Therefore if the rent is more than R1 500 per month over 10 period, a tax clearance certificate is required.			
Templates/Report	• Check that numbering is correct, throughout document.	✓	✓	✓
	• Check that spacing is correct between paragraphs.	✓	✓	✓
	• Ensure correct template is being used.	✓	✓	✓
	• Footer: Updated and not "applicant".	✓	✓	✓
	• Semi colon between each recommendation.	✓	✓	✓
	• Single line spacing.	✓	✓	✓
	• Read and checked for grammar and spelling errors. A spell check should be run.	✓	✓	✓
Valuation Synopsis	• Valuation Synopsis and Recommendation of valuation synopsis must align.			
	• Market - Inclusive of rates and excluding VAT			
	• Tariff - Exclusive of VAT, rates not applicable	✓	✓	✓
VAT	No reference to percentage %	✓	✓	✓

**Checked by:**

Author

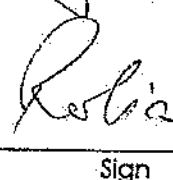
Eleanor Arends  
Name of Official

  
Sign

07.5.2019  
Date

Section Head

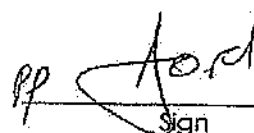
R Kolia  
Name of Official

  
Sign

7/5/2019  
Date

Regional Head

D Geysman  
Name of Official

  
Sign

2019/05/07  
Date