

ITEM NUMBER: C 46/05/16

RECOMMENDATION FROM THE EXECUTIVE MAYOR: 17 MAY 2016

MC 35/05/16 PROPOSED GRANTING OF IN-PRINCIPLE APPROVAL FOR THE CLOSURE AND DISPOSAL OF A PORTION OF ERF 4688, CONSTANTIA, A PUBLIC STREET, SITUATED AT CORNER OF POLLSMOOR AND SANCTUARY ROADS, KIRSTENHOF, CONSTANTIA: OCEANS TRUST

It is **RECOMMENDED** that:

- (a) Council grant in-principle approval for the disposal in terms of Regulation 5(1)(b)(ii) of the Municipal Asset Transfer Regulations of a portion of Erf 4688, Constantia, a public street situated at the corner of Pollsmoor and Sanctuary Roads, Kirstenhof at Constantia, in extent approximately 105 m² and shown lettered ABCD on Plan No LT 1049v1 attached as Annexure B to the report on the agenda, to Oceans Trust, or its successors-in-title, for parking purposes
- (b) Council resolve that, in terms of Section 14 of the Local Government: Municipal Finance Management Act, Act 56 of 2003, the property is not required to provide the minimum level of basic municipal services
- (c) Council approve the closure of the portion of the subject property, being a Public Street, in terms of Section 4 of the City of Cape Town Immovable Property By-law, 2015.

IPAC 56/03/2016 PROPOSED GRANTING OF IN PRINCIPLE APPROVAL FOR THE CLOSURE AND DISPOSAL OF A PORTION OF ERF 4688 CONSTANTIA, A PUBLIC STREET, SITUATED AT CORNER OF POLLSMOOR AND SANCTUARY ROADS, KIRSTENHOF, CONSTANTIA: OCEANS TRUST

MC 35/05/16 VOORGESTELDE TOESTAAN VAN BEGINSELGOEDKEURING VIR DIE SLUITING EN VERKOOP VAN 'N GEDEELTE VAN ERF 4688 CONSTANTIA, 'N OPENBARE STRAAT, GELEË OP DIE HOEK VAN POLLSMOOR- EN SANCTUARYSTRAAT, KIRSTENHOF, CONSTANTIA: OCEANS TRUST

ISIPHAKAMISO SOKUNIKEZELWA NGESIPHUMEZO NGOKOMTHETHO-SISEKO SOKUVALWA NOKUNIKEZELWA KWESIQEPHU SESIZA 4688 ECONSTANTIA, ISITALATO SOLUNTU ESIME KWIKOMA YEPOLLSMOOR NESANCTUARY ROADS, KIRSTENHOF, CONSTANTIA KWABE-OCEANS TRUST

The Committee noted spelling error, it should read "Principle".

Property Management representative was present to answer any question for clarity

RECOMMENDATIONS

Not delegated: for decision by Council:

It is recommended that:

- a) Council grant in-principle approval for the disposal in terms of regulation 5(1)(b)(ii) of the Municipal Asset Transfer Regulations of a portion of Erf 4688 Constantia, a public street situated at the corner of Pollsmoor and Sanctuary Roads, Kirstenhof, Constantia, in extent approximately 105 m² and shown lettered ABCD on the Plan No LT 1049v1 attached and marked **annexure B**, to Oceans Trust or its successors in title for parking purposes.
- b) Council resolve that, in terms of section 14 of the Local Government: Municipal Finance Management Act, Act 56 of 2003, the property not be required to provide the minimum level of basic municipal services.
- c) Council approve the closure of the portion of the subject property, being a Public Street, in terms of section 4 of the City of Cape Town Immovable Property By-law 2015.

AANBEVELINGS

Nie gedelegeer nie: vir besluitneming deur die Raad:

Daar word aanbeveel dat:

- a) Die Raad beginselgoedkeuring verleen vir die verkoop van 'n gedeelte van erf 4688 Constantia, 'n openbare straat geleë op die hoek van Pollsmoor- en Sanctuarystraat, Kirstenhof, Constantia, ongeveer 105 m² groot en aangetoon met deur letters ABCD op die aangehegte plan no. LT1049v1 en as **bylae B** gemerk, aan Oceans Trust of sy regsopvolgers vir parkeerdoeleindes ingevolge regulasie 5(1)(b)(ii) van die regulasies op die oordrag van munisipale bates.



- b) Die Raad besluit dat, ingevolge artikel 14 van die Plaaslike Regering: Wet op Munisipale Finansiële Bestuur, Wet 56 van 2003, die eiendom nie benodig word om die minimum vlak basiese munisipale dienste te lewer nie.

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- c) Die Raad die sluiting van die gedeelte van die betrokke eiendom, naamlik 'n openbare straat, ingevolge artikel 4 van die Stad Kaapstad se Verordening op Onroerende Eiendom 2015 goedkeur.

ISINDULULO

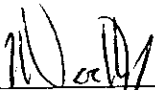
Azigunyaziswanga: isigqibo seseBhunga:

Kundululwe ukuba:

- a) IBhunga malinikeze isiphumezo ngokomtheth-siseko ukunikezelwa ngokungqinelana nomgaqo-5(1)(b)(ii) weMigaqo engoTshintshiselwano lweMpahla kaMasipala, kwesiqephu sesiza-4688 Constantia, isitalato soluntu, esime kwikona yePollsmoor neSanctuary Roads, Kirstenhof, eConstantia, esibukhulu bumalunga nama-105 m² esibonakalisiwe ngoonobumba ABCD kwiiplani engunombolo LT1049v1, eqhotyoshelweyo nephawulwe **isihlomelo B**, kwabe-Oceans Trust okanye abangena ezihlangwini zabo ngokwetayitile, ngeenjongo zendawo yokupaka.
- b) IBhunga liggibe ukuba, ngokwecandelo 14 loMthetho wobuRhulumente woMmandla ojongene noLawulo lweziMali zikaMasipala, uMthetho 56 ka-2003, ipropati mayithatyathwe njengengafunekayo ukubonelela ngeenkono ezingundoqo zikamasipala.
- c) IBhunga maliphumeze ukuvalwa kwesiqephu sepropati echaziweyo, esisitalato soluntu ngokungqinelana necandelo 4 loMthetho kaMasipala ophathelene noLawulo nokuPhathwa kweePropati ezingenakuSuswa zeSixeko saseKapa, wango-2015.

ACTION: R SCHNACKENBERG; R GELDERBLOEM

It is noted that this resolution is in line with Supply Chain Management Policy.



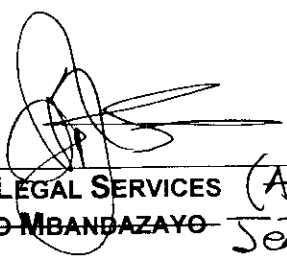
MR RICHARD WOOTTON
EMPLOYEE NO: 10207948
CHAIRPERSON : IMMOVABLE PROPERTY
AOJUICATION COMMITTEE

COMMENT:

DATE:

12/4/16





DIRECTOR : LEGAL SERVICES (Acting)
LUNGELO MBANDAZAYO Sean Roman

COMMENT: 1000 224

DATE: 14/04/2016



ALDERMAN IAN NEILSON
MAYORAL COMMITTEE MEMBER : FINANCE

COMMENT:

DATE: 15/4/16



REPORT TO IMMOVABLE PROPERTY ADJUDICATION COMMITTEE

DATE:

1. **ITEM NUMBER :**

2. **SUBJECT**

PROPOSED GRANTING OF IN PRINCIPLE APPROVAL FOR THE CLOSURE AND DISPOSAL OF A PORTION OF ERF 4688 CONSTANTIA, A PUBLIC STREET, SITUATED AT CORNER OF POLLSMOOR AND SANCTUARY ROADS, KIRSTENHOF, CONSTANTIA: OCEANS TRUST

2. **ONDERWERP:**

VOORGESTELDE TOESTAAN VAN BEGINSSELGOEDKEURING VIR DIE SLUITING EN VERKOOP VAN 'N GEDEELTE VAN ERF 4688 CONSTANTIA, 'N OPENBARE STRAAT, GELEË OP DIE HOEK VAN POLLSMOOR- EN SANCTUARYSTRAAT, KIRSTENHOF, CONSTANTIA: OCEANS TRUST

2. **ISIHLOKO:**

ISIPHAKAMISO SOKUNIKEZELWA NGESIPHUMEZO NGOKOMTHETHO-SISEKO SOKUVALWA NOKUNIKEZELWA KWESIQEPHU SESIZA 4688 ECONSTANTIA, ISITALATO SOLUNTU ESIME KWIKOMA YEPOLLSMOOR NESANCTUARY ROADS, KIRSTENHOF, CONSTANTIA KWABE-OCEANS TRUST

LSU: G4398
PH 2016/0068 (Category 4)
S14/3/4/3/807/16/8695

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**

The purpose of this report is to obtain the following from Council:

- An in principle approval of the disposal of the subject immovable property in terms of Regulation 5 of the Municipal Asset Transfer Regulations;

- Approval that the immovable property is not required for the provision of basic municipal services in terms of Section 14 of the Municipal Finance Management Act;
- Approval of the closure of the Public Street in terms of Section 4 of the City of Cape Town Immovable Property By-law, 2015.

In terms of the provisions of the Municipal Finance Management Act (MFMA) and the associated Municipal Asset Transfer Regulations (MATR), the City may only dispose of immovable property after (a) the City has made a determination that the asset is not required for the provision of basic municipal services and (b) approved in principle that the asset may be disposed of.

The MATR further stipulates that the City may not commence with the disposal process or negotiations unless approval in principle has been obtained. For reasons referred to in the report, this transaction relates to a direct deal and not a disposal via a tender process and the following have therefor already been addressed and further discussed in the body of the report:

- Public participation
- Valuation determination

The recommendations for final approval will be submitted to the Immovable Property Adjudication Committee (IPAC) in terms of Part 42 of the System of Delegations. This IPAC report will include the comments obtained from subcouncil on the proposed disposal as per **annexure A**.

5. FOR DECISION BY COUNCIL

This report is for consideration by

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

6. EXECUTIVE SUMMARY

PURPOSE OF REPORT	To obtain approval for the proposed closure, subdivision and disposal of a portion of Erf 4688 Constantia, a Public Street, situated at the corner of Pollsmoor and Sanctuary Roads, Kirstenhof, Constantia, in extent approximately 105 m ² and as shown lettered ABCD on the Plan No LT 1049v1 attached and marked annexure B , to Oceans Trust for parking purposes.
Property description	Portion of Erf 4688 Constantia
Applicant	Oceans Trust
Site extent	± 105 m ²
Current zoning	Transport 2

Current usage	Vacant			
Proposed usage	Parking			
Application description	Sale, closure, sub-division, and consolidation			
Submission date	3 September 2014			
Circulation date	22 September 2014			
Comments	Awaited branch comments and valuation			
Public participation outcome summary	The proposed disposal and closure were advertised on 23 October 2015. No objections were received.			
WARD Cllr Cllr P East	NOTICE	DATE	WARD	71
		16-10-2015		
Viable				X
Recommended decision	Approval	X	Refusal	
Outcome of Sub-Council consideration	The matter served before SC 20 at the meeting held on 17 February 2016 under item 20SUB33/2/2016 . The proposed disposal was supported. (annexure A).			

7. RECOMMENDATIONS

Not delegated: for decision by Council:

It is recommended that:

- (a) Council grant in-principle approval for the disposal in terms of regulation 5(1)(b)(ii) of the Municipal Asset Transfer Regulations of a portion of Erf 4688 Constantia, a public street situated at the corner of Pollsmoor and Sanctuary Roads, Kirstenhof, Constantia, in extent approximately 105 m² and shown lettered ABCD on the Plan No LT 1049v1 attached and marked **annexure B**, to Oceans Trust or its successors in title for parking purposes.
- (b) Council resolve that, in terms of section 14 of the Local Government: Municipal Finance Management Act, Act 56 of 2003, the property not be required to provide the minimum level of basic municipal services.
- (c) Council approve the closure of the portion of the subject property, being a Public Street, in terms of section 4 of the City of Cape Town Immovable Property By-law 2015.

7. AANBEVELINGS

Nie gedelegeer nie: vir besluitneming deur die Raad:

Daar word aanbeveel dat:

- (a) Die Raad beginselgoedkeuring verleen vir die verkoop van 'n gedeelte van erf 4688 Constantia, 'n openbare straat geleë op die hoek van Pollsmoor- en Sanctuarystraat, Kirstenhof, Constantia, ongeveer 105 m² groot en aangetoon met deur letters ABCD op die aangehegte plan no. LT1049v1 en as **bylae B** gemerk, aan Oceans Trust of sy regsopvolgers vir parkeerdoeleindes ingevolge regulasie 5(1)(b)(ii) van die regulasies op die oordrag van munisipale bates.
- (b) Die Raad besluit dat, ingevolge artikel 14 van die Plaaslike Regering: Wet op Munisipale Finansiële Bestuur, Wet 56 van 2003, die eiendom nie benodig word om die minimum vlak basiese munisipale dienste te lewer nie.
- (c) Die Raad die sluiting van die gedeelte van die betrokke eiendom, naamlik 'n openbare straat, ingevolge artikel 4 van die Stad Kaapstad se Verordening op Onroerende Eiendom 2015 goedkeur.

7. ISINDULULO

Azigunyaziswanga: isigqibo seseBhunga:

Kundululwe ukuba:

- (a) IBhunga malinikeze isiphumezo ngokomtheth-siseko ukunikezelwa ngokungqinelana nomgaqo-5(1)(b)(ii) weMigaqo engoTshintshiselwano lweMpahla kaMasipala, kwesiqephu sesiza-4688 Constantia, isitalato soluntu , esime kwikona yePollsmoor neSanctuary Roads, Kirstenhof, eConstantia, esibukhulu bumalunga nama-105 m² esibonakalisiwe ngoonobumba ABCD kwiiplani engunombolo LT1049v1, eqhotyoshelweyo nephawulwe **isihlomelo B**, kwabe-Oceans Trust okanye abangena ezihlangwini zabo ngokwetayitile, ngeenjongo zendawo yokupaka.
- (b) IBhunga ligqibe ukuba, ngokwecandelo 14 loMthetho wobuRhulumente woMmandla ojongene noLawulo lweziMali zikaMasipala, uMthetho 56 ka-2003, ipropati mayithatyathwe njengengafunekiyi ukubonelela ngeenkonzo ezingundoqo zikamasipala.
- (c) IBhunga maliphumeze ukuvalwa kwesiqephu sepropati echaziweyo, esitalato soluntu ngokungqinelana necandelo 4 loMthetho kaMasipala ophathelene noLawulo nokuPhathwa kweePropati ezingenakuSuswa zeSixeko saseKapa, wango-2015.

8. DISCUSSION/CONTENTS

8.1 BACKGROUND

- 8.1.1 An application was received from Oceans Trust, the registered owners of Erf 8695 Constantia, to purchase a portion of abutting City owned land, being a portion of Erf 4688 Constantia (a Public Street) situated at the corner of Pollsmoor and Sanctuary Roads, Kirstenhof, Constantia, in extent approximately 105 m², as shown by the figure ABCD on the Plan No LT 1049v1 attached and marked **annexure B**, for the parking purposes. The subject property is further depicted on the aerial photograph attached and marked **annexure C** and the photographs attached and marked **annexure D**.
- 8.1.2 The application was circulated to the respective service branches for comment. No objections were received against the disposal of the property, subject to certain conditions, as set out in **annexure E** to this report.
- 8.1.3 The proposed closure and disposal was advertised in the press on 23 October 2015. Notice of the intention to close and dispose of the subject property was also sent to abutting owners, the Councilor and the relevant community organizations on 16 October 2015. No objections were received against the proposed closure and disposal. As required in terms of Section 4(2)(e) of the City of Cape Town Immovable Property By-Law 2015, a copy of the advertisement is attached as **annexure F**.
- 8.1.4 The subject property is zoned Transport 2. The property is registered in the name of Grimags (Pty) Ltd by Deed of Transfer No T22997/1974 and vests in the City of Cape Town as Public Street.
- 8.1.5 The intention to close and dispose of the subject property served before Sub-Council 20 at their meeting held on 17 February 2016 under Item No 20SUB33/2/2016. The closure and disposal was supported, as can be seen from the resolution attached and marked **annexure A**.

8.2 CONSULTATION WITH BRANCHES:

The application was circulated to the relevant service branches of Council and no objections were received to the proposed disposal, subject to certain conditions, as more fully set out in **Annexure E**, which will form part of the conditions of the agreement of sale.

8.3 FACTORS MOTIVATING RECOMMENDATION:

- 8.3.1 The portion of land is no longer required for Municipal purposes.
- 8.3.2 The City will receive a market related purchase price of R110 000, excluding VAT, escalating by 6% per annum in respect of the disposal of the subject property.
- 8.3.3 The disposal will relieve Council of the maintenance burden in respect thereof.

8.3.4 The property is non-viable and can only be utilized by the applicants' as abutting landowners.

8.4 PUBLIC PARTICIPATION

		Comments
Advertising	Cape Times & Burger	Date: 23 October 2015
	Prov & Nat Treasury	Date: 23 October 2015
	Notices to adj owners	Date: 16 October 2015
	Ward councillor	Date: 16 October 2015
	Subcouncil Chair & Manager	Date: 16 October 2015
	Community organisation(s)	Date: 16 October 2015
Outcome	Objections	No objections were received
	Support / No objection	Disposal supported
	Comments	None
	Ward Councillor response	No objections

8.5 VALUATION

The City's Professional Valuer has recommended that the City land being portion of Erf 4688 Constantia, a Public Street, shown by the figure ABCD on attached Plan LT 1049v1 in extent approximately 105 m² be closed and sold to Oceans Trust for the sum of R110 000 excluding of VAT and costs.

The purchase price is to be escalated by 6% per annum compounded annually on a pro rata basis commencing 6 months from date of valuation. Accordingly the above recommended purchase price is to be adjusted as from 2016-03-01.

A copy of the Valuation synopsis is attached and marked **annexure G**.

8.6 VAT

VAT will be levied at the standard rate.

8.7 BLACK ECONOMIC EMPOWERMENT (BEE) STATUS

The applicants are not from a previously disadvantaged group.

8.8 CONSTITUTIONAL AND POLICY IMPLICATIONS

8.8.1 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 land is not required for the provision of the minimum level of a basic municipal service.

8.8.2 The City of Cape Town Immovable Property By-Law 2015 (Section 4) allows for the closure of a Public Street.

8.8.3 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 alienation of immovable property.

8.9 FINANCIAL IMPLICATIONS

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

8.10 TAX COMPLIANCE

The Applicant has complied. See SARS Tax Clearances attached hereto as **annexure H**.

8.11 FINANCIAL DUE DILIGENCE

The Applicant's debt profile has been verified and is not in arrears.

8.12 SUSTAINABILITY IMPLICATIONS

Does the activity in this report have any sustainability implications for the City	No	X	Yes
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8.13 LEGAL IMPLICATIONS

8.13.1 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:

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

This proposal complies with Section 14 of the Local Government Municipal Finance Management Act No. 56 of 2003 in that the relevant branches of Council have confirmed in writing that the asset is not needed to provide the minimum level of basic municipal services.

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

The expected gain to result from the proposed disposal is fair market value and future rates and taxes.

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 a financial benefit in the form of market related purchase price as well as rates and taxes following the development of the property. The market value of the portion of the subject property has been determined to be R110 000, 00 excluding VAT.

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 sale agreement will contain terms and conditions as imposed by the Director: Property Management in terms of delegated authority.

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

The purchaser will be responsible for the transfer 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.

The Director : Property Management, in terms of her delegated powers, approved the public participation process as required, resulting in the proposed closure and disposal being advertised in the Cape Times and Die Burger on 23 October 2015. Closing date for objections was 23 November 2015. Copies of the advertisement were sent to the Ward Councillor, Chairperson of the relevant Sub-Council and registered local community organisations. No objections were received.

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. No objections / comments were received from National and Provincial Treasury.

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.

None of these interests will be compromised as a result of the alienation of the asset; in fact, it will be supported.

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

- The proposal complies with Section 13.1 of the Council's Policy on the Management of Certain of the City of Cape Town's Immovable Property, approved by Council on 26 August 2010, which allows for the direct sale of non-viable property which can only be utilized by one or more adjacent landowners, without any competitive process having been followed, on the basis that no purpose would be served by a competitive process.
- 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

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

- The subject property will have to be closed as a Public Street.
- 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 applicants' adjacent Erf 8695 Constantia 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 organisational structure?

No X

Yes

ANNEXURES

- | | | |
|------------|---|---|
| Annexure A | - | Sub Council Resolution No 20SUB33/2/2016 |
| Annexure B | - | Plan No LT 1049v1 |
| Annexure C | - | Aerial Photograph |
| Annexure D | - | Photos |
| Annexure E | - | Conditions of service branches of Council which will form part of the agreement of sale |
| Annexure F | - | Advertisement of closure and disposal |
| Annexure G | - | Valuation Synopsis |
| Annexure H | - | SARS Tax Clearance Certificate |

FOR 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 REF NO	S14/3/4/3/807/16/8695 (20001772)
MANAGER: PROPERTY HOLDING	Smackenberg

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

Comment:

NAME Ruby Getterbloem
 DATE 2016-03-14

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

Charlyne Arendse
 LEGAL COMPLIANCE

NON-COMPLIANT

NAME CHARLYNNE ARENDOSE
 TEL 021 400 1265
 DATE 16/3/2016

Comment:

Certified as legally compliant:
 Based on the contents of the report. *BA*