

CITY OF CAPE TOWN
ISIXEKO SASEKAPA
STAD KAAPSTAD

REPORT TO SUBCOUNCIL 16

11 23556

1 ITEM NUMBER 16 SUB 8/11/19

2 SUBJECT

PROPOSED GRANTING OF RIGHTS FOR OUTDOOR SEATING / TABLES AND CHAIRS IN A PUBLIC AREA FOR BUSINESS PURPOSES

2 ONDERWERP

VOORGESTELDE TOEKENNING VAN REGTE VIR BUITELUGSITPLEK / TAFELS EN STOELE IN 'N OPENBARE GEBIED VIR SAKEDOELEINDES

2 ISIHLOKO

ISIPHAKAMISO SOKUVUNYELWA KWAMALUNGelo NGOKUJOLISWE
KWINDAWO YOKUCHOPHA ENGAPHANDLE (IITAFILE NEZITULO
KUMMANDLA WOLUNTU KULUNGISELELWA IMIBANDELA YEZOSHISHINO

LSU J0127/L1565
(Category 1)

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 delegations Part 27B paragraph 19(5), 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, manage or control capital assets of a value less than R10 million and for a period not longer than 3 years, provided that this delegation may only be exercised after considering the comments of the Sub-council in whose area of jurisdiction the capital asset is situated."

- ☐ Final decision lies with Director: Property Management.

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EXECUTIVE SUMMARY

PURPOSE OF REPORT	Proposed granting of rights for outdoor seating / tables and chairs in a public area for commercial purposes.			
Site extent	Refer to Annexure A			
Submission date	August 2019			
Current zoning	Public Street			
Current usage	Outdoor Seating / Tables and Chairs			
Proposed usage	Outdoor Seating / Tables and Chairs			
TOD Assessment	Cat 1 – TOD N/A	X	Cat 1	
	Based on the TOD (Transit Oriented Development) strategic screening of the proposed erf to be disposed of, the subject property was found to have no TOD potential (also known as Category 1 in terms of the TOD land Disposal Assessment Process) and did not meet the minimum TOD criteria due to its size, lack of consolidation potential and/or locational characteristics relevant to the City's TOD Strategic Framework.			
Property Management Comment on TOD Assessment	Not applicable			
Internal circulation date	Not applicable			
Internal department comments	Not applicable			
Public participation outcome summary	Bulk Advert – no comments/objections			
WARD CLLR	NOTICE DATE			WARD
Various	07 June 2019			NO
Viable	Yes		No	X
	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"> • The leasing of the land will relieve Council of the maintenance burden. • A market related income will be generated. • Better utilization of City land. 			

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Strategic intent	SFA 1 : an OPPORTUNITY City of Cape Town	
	Objective 1.1	Positioning Cape Town as forward 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 granting of rights to the applicants as listed and for the areas as set out, in **annexure A**, or their successors in-title, be approved subject to inter alia the following conditions:

- a) At a market rental as proposed by the valuations branch (refer to **annexure C**), with an 8% escalation per annum from date of valuation i.e as from 2019/07/18.
- b) The lease will endure for a period of 3 years.
- c) The properties will be used for outdoor seating in a public area for commercial purposes only.
- d) Subject to such further conditions to be imposed by the Director: Property Management in terms of her delegated authority.
- e) Subject to compliance with any other statutory requirements.
- f) No compensation will be payable for any improvement made to the property.

5 AANBEVELINGS TER OORWEGING EN KOMMENTAAR DEUR DIE BETROKKE SUBRAAD

Daar word aanbeveel dat die toekenning van regte vir die aansoeker vir die areas soos aangetoon in **bylae A**, of hulle regsopvolgers, goedgekeur word onderworpe aan onder meer die volgende voorwaardes:

- a) Teen 'n markverwante huurbedrag soos voorgestel deur die waardasietak (verwys na **bylae C**), met 'n styging van 8% per jaar saamgestel met ingang van die waardasiedatum vanaf 2019-07-18.
- b) Die huurooreenkoms sal vir 'n tydperk van drie jaar geld.
- c) Die eiendom slegs vir buitesitplek in 'n openbare area vir kommersiële doeleindes gebruik sal word.
- d) Onderworpe aan sodanige verdere voorwaardes opgelê deur die direkteur: eiendombestuur ingevolge haar gedelegeerde magtiging.
- e) Onderworpe aan die nakoming van enige ander statutêre vereistes.

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- f) Geen vergoeding betaal sal word vir enige verbetering wat aan die eiendom gemaak word nie.

5 IZINDULULO UKUBA ZIQWALASELWE KWAYE KUVAKALISWE ULUVO LIBHUNGANA ELIFANELEKILEYO

Kundululwe ukuba ukunikezelwa kwamalungelo kumfakizicelo ngokubhekisele kwiindawo njengoko kubonakalisiwe Kwisihlomelo-A okanye kwabo bangena ezihlangwini zabo ngokwetayitile, makuphunyezwe phakathi kwezinye izinto phantsi kwalemiqathango ilandelayo:

- a) Ngexabiso lerenti lasemakethi njengoko kuphakanyiswe lisetyana elingezoqingqo-maxabiso (jonga kwisihlomelo), kunye nokunyuka nge-8% ngonyaka lihlanganisiwe ukususela ngomhla woqingqo-maxabiso 2019-0718.
- b) Uqeshiso olu luyakuthi luqhubekeke isithuba seminyaka emi-3.
- c) Iipropati ziyakuthi zisetyenziselwe ukuchopha ngaphandle kummandla woluntu kulungiselelwa ukurhweba kuphela..
- d) Ngokuxhomekeke kweminye imiqathango eyakuthi inyanzeliswe nguMlawuli woLawulo lwePropati esebenzisa amagunya akhe awagunyaziselweyo.
- e) Ngokuxhomekeke ekuthotyelweni kwayo nayiphina imimiselo yomthetho.
- f) Akukho mbuyekezo iyakuthi ihlawulwe ngalo naluphina uphuculo oluthe lwenziwa kwipropati.

6 DISCUSSION/CONTENTS

6.1 BACKGROUND:

Various shops are situated in the the heart of the Central Business District where tourists enjoy the relaxing environment and most of all, various drinks while out and about. These coffee shops / restaurants provide that service where the locals and internationals can sit back and relax and enjoy a time out session inside and especially outside the shop.

Previously, the "Tables and Chairs" portfolio was with the Department of Economic Development and has been transferred to Property Management in 2016. The objective is to regularise, maintain and monitor all the various agreement holders to ensure everyone is compliant in terms of Council's policies.

Restaurants, coffee shops, delis and fast food outlets request permission from Council to place tables and chairs on pavements, pedestrian malls and squares. The agreement is only issued if there are no adverse comments received from the city departments in terms of pedestrian and vehicular access, and from an aesthetic, planning and urban design point of view. The placing of tables and chairs on public space by restaurants, coffee shops, delis and fast food outlets is at the sole discretion of Council, and is to create a pleasant and attractive environment and ambiance for the benefit of the general public. Property Management has developed a process guideline to regularise these agreements (refer to **annexure B**).

6.2 CONSULTATION WITH INTERNAL BRANCHES:

The Transport (TDA) Department was consulted and has no objection, subject to the following condition, if applicable, that will form part of the agreement:

- 6.2.1. The agreement takes cognizance of the possible future use of this land for municipal purposes and the City of Cape Town Traffic engineer approves these lease agreements.

6.3 VALUATION

- 6.3.1 The application category does not fit within the tariff structure of the City approved in May 2019;
- 6.3.2 The City's Professional Valuers on 18 July 2019 assessed the rental value of the various areas, refer to **annexure C** attached. Council's service branches confirmed that the asset is not required for own purposes.

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 land 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.

6.5 FINANCIAL IMPLICATIONS

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

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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 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.

No agreement will be concluded until a valid Tax Clearance Certificate is furnished.

6.7 FINANCIAL DUE DILIGENCE

The applicant 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 <input checked="" type="checkbox"/>	Yes <input type="checkbox"/>
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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.

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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 market related rental.

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 leases being advertised in the Cape Argus and Die Burger on 13 April 2018. Closing dates for objections were 14 May 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 comments and 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 not exceeding 3 years (Non-Significant Property Right). National and Provincial Treasury have been notified. No comments and 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 the 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 ☐

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ANNEXURES

Annexure A: Various Shop/shops
Annexure B: Outdoor Seating Process Flow
Annexure C: Valuation

JMH

FOR FURTHER DETAILS CONTACT:

NAME	GARTH JACOBS
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E-MAIL ADDRESS	GARTH.JACOBS@CAPETOWN.GOV.ZA
DIRECTORATE	ECONOMIC OPPORTUNITIES AND ASSET MANAGEMENT
FILE REF NO	N/A
MANAGER: PROPERTY HOLDING RACHEL SCHNACKENBERG	<i>R. Schnackenberg</i> 02-09-2019

[Signature]
 ACTING DIRECTOR : PROPERTY MANAGEMENT IN HER
 CAPACITY AS EXECUTIVE DIRECTOR : ECONOMIC
 OPPORTUNITIES AND ASSET MANAGEMENT
 NOMINEE

NAME ~~RUBY GELDERBLOEM~~ *MIKE SIMS*

DATE *11/10/2019*

Comment:

[Signature]
 LEGAL COMPLIANCE

NAME *Joan-Mari Hote*

TEL *021 400 2753*

DATE *21/10/2019*

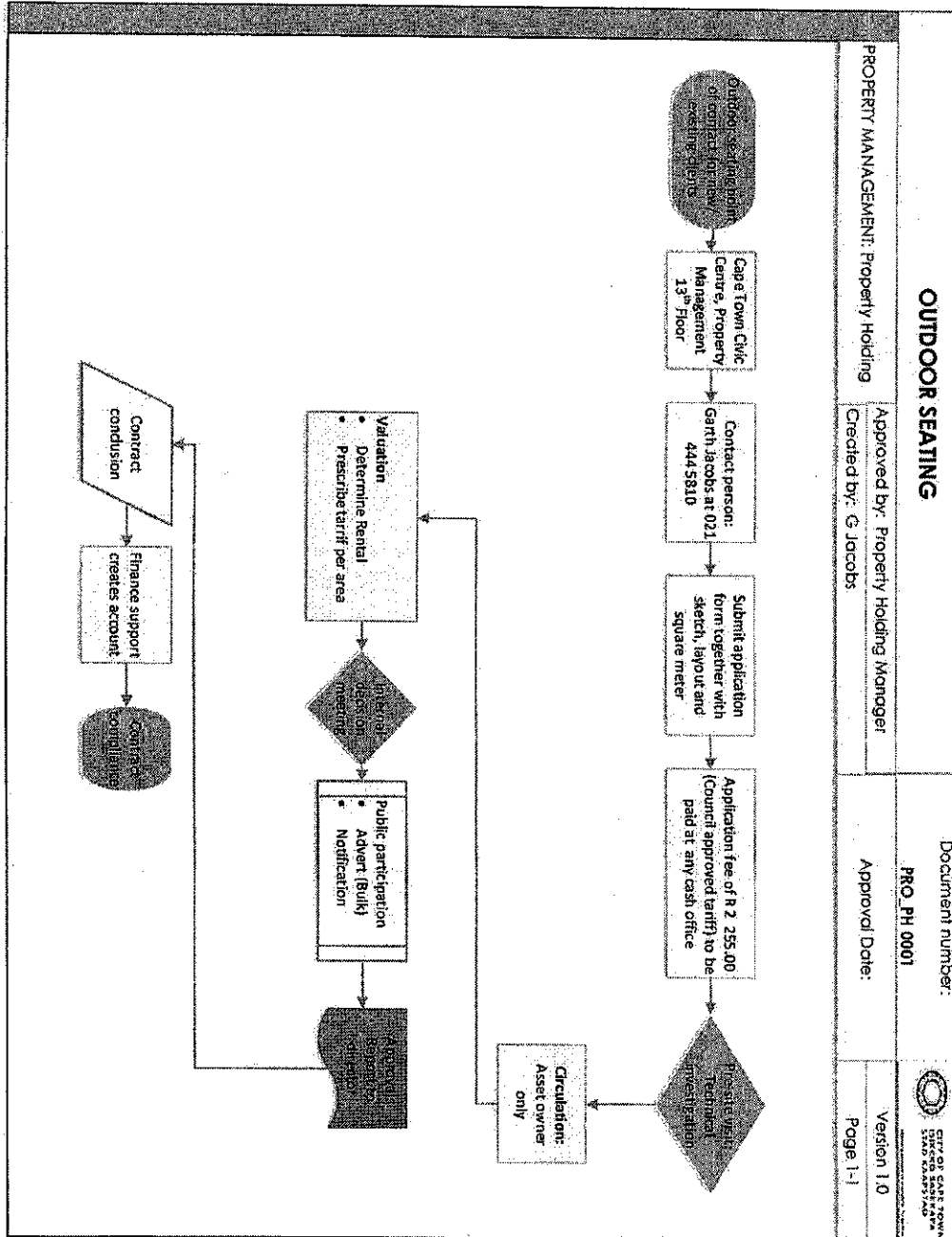
☒ REPORT COMPLIANT WITH THE PROVISIONS OF
 COUNCIL'S DELEGATIONS, POLICIES, BY-LAWS
 AND ALL LEGISLATION RELATING TO THE MATTER
 UNDER CONSIDERATION.

☐ NON-COMPLIANT

Comment:

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

ANNEXURE B



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ANNEXURE C



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ECONOMIC OPPORTUNITIES AND ASSET MANAGEMENT
PROPERTY MANAGEMENT

Aneesah Abrahams
Professional Valuer

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Ref: Job 7880

DATE	2019-07-18
TO	Property Holding: Improved Properties and Lease ins
ATTENTION	Isaac Martin

VALUATION REPORT FOR OUTDOOR SEATING TARIFFS 2019-2020

1. Brief

We refer to your memorandum dated 2019-07-02 requesting tariff rates for outdoor seating purposes and more particularly to provide a differential rate as agreed upon at Subcouncil 16 on 2018-10-29.

2. Date of Assessment

2019-08-31

3. Method of valuation

The most widely and accepted method of valuation used to determine the market rental is the Direct Comparison Method of valuation. This method takes into consideration rentals that can be achieved for similar usage after taking into account various differences/value forming attributes of the specific areas, an opinion of an applicable rate is derived based on market criteria.

For the purposes of this exercise, we have assumed that the outdoor seating areas will have no side structures or retractable roof structure making it vulnerable to the elements. For this reason, we have applied a % of the going retail rentals in the various areas, such % has been determined from the City's extensive database on successfully concluded rentals for outdoor seating purposes together with the input from property brokers.

4. Findings

Significant factors when establishing a rental for outdoor seating purposes, is visibility, accessibility and foot traffic as these are key ingredients to the business model of the end user.

In assessing the rental, comparable rentals were looked at in the precinct of the subject property and further afield, with the necessary adjustments made accordingly.

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L.S.M
Living Standard Measure.

5. Estimation of Value

Based on our valuation database of outdoor seating and extensive market research of retail rentals, it is considered that the following rates are fair and reasonable to apply.

Area	High LSM	Medium LSM
Cape Town CBD	R 80	R 75
Camps Bay	R110	R105
Sea Point	R90	R 85
Green Point	R90	R 85
Gardens	R 85	R 80
Tamboerskloof	R 85	R 80
Oranjezicht	R 85	R 80
Vredehoek	R 85	R 80
Milnerton	R 60	R 55
Tableview	R 60	R 55
Simons Town	R 60	R 55

Area	High LSM	Medium LSM
Fish Hoek	R 60	R 55
Kalk Bay	R 60	R 55
Gordons Bay	R 60	R 55
Strand	R 60	R 55
Claremont	R 70	R 65
Newlands	R 70	R 65
Observatory	R 65	R 60
Rondebosch	R 65	R 60
Belville	R 50	R 45
Durbanville	R 50	R 45

In addition, in discussions with various Property Brokers and based on property value patterns, rentals achieved for properties with a lesser trading visibility generally achieve lower rentals in the market. Therefore, for purposes of this exercise, it is considered reasonable to adjust the rates should the application not be situated on a busy thoroughfare.

The above tariffs exclude VAT, and inclusive of rates. The above tariffs are for outdoor seating purposes only i.e. open tables and does not apply to outdoor seating areas that are partially or fully enclosed nor leased areas that have been developed upon.

The above tariffs is to escalate at 8% per annum from date valuation i.e. as from 2019-09-01.



Aneesah Abrahams
Professional Valuer (Reg. no. 7367/1)

RP



Paul Pendlebury
Head: Market Valuations

Date: 2019-08-06

http://teamsites.capetown.gov.za/sites/finpropmanpi/valuations/Users/aneesah.abrahams/2019/0727_TableTariff_Leases2.docx

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