



REPORT TO SUBCOUNCIL 16

1 ITEM NUMBER 16 SUB 07/06/2021SM

2 SUBJECT

PROPOSED LEASE OF CITY LAND, PORTION OF A PUBLIC STREET, UNREGISTERED STATE LAND, ABUTTING ERF 163045 CAPE TOWN, BUITENGRACHT STREET, CAPE TOWN FOR GARDENING PURPOSES: GREEN WILLOWS PROP 9 (PTY) LTD

ONDERWERP

VOORGESTELDE VERHURING VAN STADSGROND, GEDEELTE VAN 'N OPENBARE STRAAT, ONGEREGISTREERDE STAATSGROND, AANGRENSEND AAN ERF 163045 KAAPSTAD, BUITENGRACHTSTRAAT, KAAPSTAD VIR TUINMAAKDOELEINDE: GREEN WILLOW PROP 9 (EDMS.) BPK.

ISIHLOKO

ISIPHAKAMISO SOKUQESHISA UMHLABA WESIXEKO, ISIQEPHU SESITATALATO SOLUNTU, UMHLABA KARHULUMENTE ONGABHALISWANGA, ESIMELENE NESIZA 163045, EBUITENGRACHT STREET, EKAPA UKULUNGISELELA IMIBANDELA YEGADI: KWIGREEN WILLOWS PROP 9 (PTY) LTD

M 3449

PTMS NO: 130004355

File Ref No: CT 14/3/6/1/2/1776/A00

(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.”

Making progress possible. Together.

- ☐ 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	138m ²			
Submission date	7 June 2018			
Current zoning	Public Street			
Current usage	Gardening			
Proposed usage	Gardening			
WARD CLLR	NOTICE DATE		WARD	
Cllr. Ian McMahon	24 February 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	
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, unregistered state land, abutting erf 163045 Cape Town, situated in Buitengracht Street, Cape Town shown hatched and lettered ABCDEFG on the attached sketch marked annexure A, in extent approximately 138m², to Green Willows Prop 9 (Pty) Ltd, or their successors in title, be approved subject to inter alia the following conditions:

- A tariff rental of R 1 261.00 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 van openbare straat, gedeelte van ongeregistreerde staatsgrond, aangrensend aan erf 163045 Kaapstad, geleë in Buitengrachtstraat, Kaapstad, gearseer en met die letters ABCDEFG aangetoon op die aangehegte skets, gemerk bylae A, ongeveer 138 m² groot, aan Green Willows Prop 9 (Edms.) Bpk., of sy regsopvolgers, goedgekeur word onderworpe onder meer aan die volgende voorwaardes, dat:

- a) 'n Tariefhuurbedrag van R1 261 per jaar, BTW bereken teen die koers van toepassing ten tye van die transaksie ingesluit, betaalbaar is. Eiendomsbelasting nie van toepassing nie;
- b) Die huurooreenkoms vir 'n tydperk van tien jaar sal duur, onderworpe aan twee maande se kennis van opsegging te eniger tyd;
- c) Die huurbedrag jaarliks aangepas sal word volgens die huurtariefstruktuur soos deur die Raad goedgekeur;
- d) Die eiendom slegs vir tuinmaakdoeleindes gebruik word;
- e) Onderworpe aan enige verdere voorwaardes wat deur die direkteur: eiendomsbestuur ingevolge haar gedelegeerde bevoegdheid opgelê word;
- f) Onderworpe aan die nakoming van enige ander statutêre vereistes.

IZINDULULO UKUBA ZIQWALASELWE KWAYE KUVAKALISWE ULUVO LIBHUNGANA ELIFANELEKILEYO

Kundululwe ukuba makuphunyezwe ingqeshiso yesiqephu sesitalato soluntu, umhlaba karhulumente ongabhaliswanga, isiza 163045 esabelana ngomda eKapa, esime eBuitengracht Street, eKapa esibonakaliswe ngemigca ekrweliweyo ngoonobumba ABCDEFG kwisazobe esiqhotyoshelweyo esiphawulwe njengesihlomelo A, esibukhulu bumalunga ne138m², kwiGreen Willows Prop 9 (PTY) Ltd, okanye abangena ezihlangwini zabo ngokwetayitile, ngokuxhomekeke phakathi kwezinye izinto kule migaqo ilandelayo:

- a) Makuhlawulwe ixabiso lerenti eliyiR1 261.00 ngonyaka kuquka iRhafuntengo elibalwe ngokwexabiso elisetyenziswayo ngexesha lonaniselwano. Iireyithi azihlawulwa.
- b) Ingqeshiso iyakuthi iqhubekeke isithuba seminyaka elishumi, ngokuxhomekeke kwinyanga ezimbini zesaziso sokuphelisa ingqeshiso esinokwenziwa nangaliphi na ixesha
- c) Ixabiso lerenti liyakuthi lilungelelaniswe rhoqo ngonyaka ngokungqinelana nesakhoko samaxabiso njengoko siphunyezwe liBhunga;
- d) Ipropati iyakusetyenziselwa imibandela yegadi kuphela;
- e) Ngokuxhomekeke kweminye imiqathango eyongeziweyo eya kumiselwa nguMlawuli woLawulo lwePropati ngokwamagunya wakhe awagunyaziselweyo;
- f) Ngokuxhomekeke ekuthotyelweni kwayo nayiphi na imimiselo yomthetho engeminye

Making progress possible. Together.

6 DISCUSSION/CONTENTS

6.1 BACKGROUND:

This is a new application for lease of non-viable land. Green Willows Prop 9 (Pty) Ltd, owner of Erf 163045 Cape Town, expressed their interest in leasing City land, portion of public street, unregistered state land, abutting erf 163045 Cape Town, Buitengracht Street, Cape Town. The applicant applied to lease the land for gardening purposes for a period of ten (10) years.

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:

Transport Impact Assessment and Development Control has no objection subject to the following condition:

- Pedestrian movement is not impeded and there is not traffic related impact.

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

Making progress possible. Together.

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 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 whose 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"/>
---	--	------------------------------

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.

Making progress possible. Together.

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 R 1261.00 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 ☒

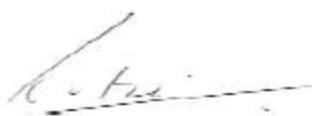

Making progress possible. Together.

Yes ☐

ANNEXURES

Annexure A: Sketch

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 14/3/6/1/2/1776/A00
MANAGER: PROPERTY HOLDING RACHEL SCHNACKENBERG	Rachel Schnackenberg  Digitally signed by Rachel Schnackenberg Date: 2021.05.12 17:51:06 +02'00'

Andre Human 
Digitally signed by Andre Human
Date: 2021.05.13 11:38:18 +02'00'

Comment:

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

NAME ANDRE HUMAN

NAME

DATE

Jason Sam Liebenberg 
Digitally signed by Jason Sam Liebenberg
Date: 2021.05.18 13:52:46 +02'00'

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

LEGAL COMPLIANCE

☐ NON-COMPLIANT

NAME

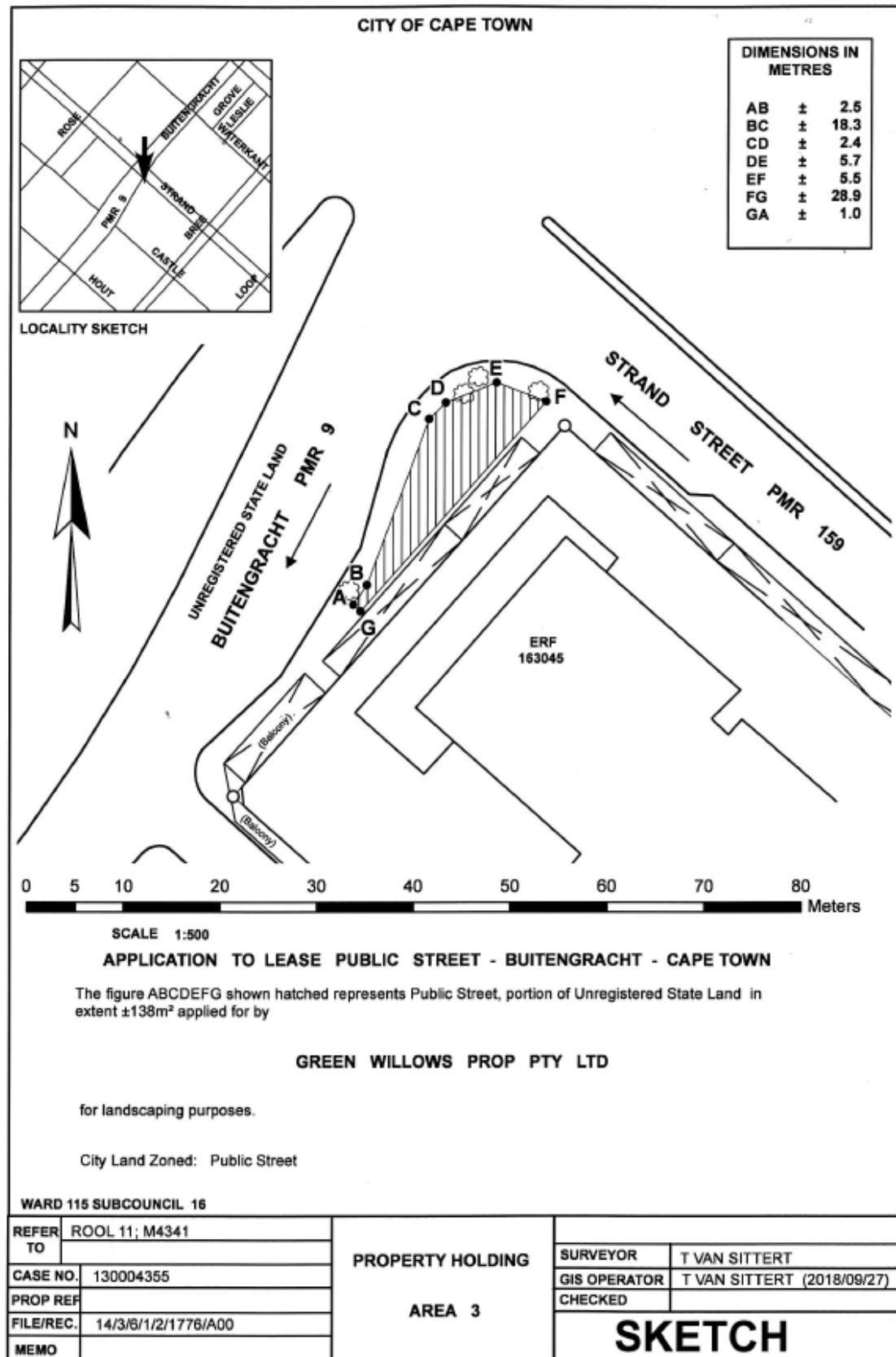
Comment:

TEL

Certified as legally compliant based on the contents of the report

DATE

Making progress possible. Together.



Making progress possible. Together.