



REPORT TO SUB COUNCIL 16

---

**1 ITEM NUMBER 16 SUB 09/06/2021SM**

**2 SUBJECT**

**PROPOSED LEASE OF PORTION OF CITY LAND, BEING PORTION OF ERF  
REMAINDER 838 SEA POINT, OCEAN VIEW DRIVE AND FRIARS ROAD, SEA  
POINT FOR SECURITY PURPOSES: BRENDON BODY CORPORATE**

**2 ONDERWERP**

**VOORGESTELDE VERHURING VAN 'N GEDEELTE VAN STADSGROND,  
NAAMLIK 'N GEDEELTE VAN RESTANT ERF 838 SEEPUNT, OCEAN VIEW-  
RYLAAN EN FRIARSWEG, SEEPUNT, VIR SEKURITEITSDOELEINDES:  
BRENDON-REGSPERSOON**

**2 ISIHLOKO**

**ISIPHAKAMISO SOKUQESHISWA KWESIQEPHU SOMHLABA WESIXEKO,  
OSISIQEPHU SENTSALELA YESIZA 838 SEA POINT, ESIKWI OCEAN VIEW  
DRIVE NE FRIARS ROAD, E SEA POINT**

**M3750**

**PTMS NO: 130006630**

**File Ref No: CT14/3/6/1/2/1988/05/838**

**(Category 4)**

**3 DELEGATED AUTHORITY**

- ☒ The report is for comment by Subcouncil 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	Proposed lease for security purposes			
Site extent	2 m <sup>2</sup>			
Submission date	13 September 2019			
Current zoning	Public Street			
Current usage	Gardening purposes			
Proposed usage	Gardening purposes			
Internal circulation date	21 November 2019			
Internal department comments	Branch comments received.			
Public participation outcome summary	Advertised in the Cape Argus and Die Burger on 22 May 2020. No objections or comments were received.			
WARD CLLR	NOTICE DATE			WARD
Nicola Jowell	14 January 2021			54
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"> <li>• The leasing of the land will relieve Council of the maintenance burden.</li> <li>• A tariff related rental income will be generated.</li> <li>• Better utilization of City land</li> </ul>	
Strategic intent	<b>SFA 1 : an OPPORTUNITY City of Cape Town</b>	
	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 a portion of City Land, being portion of the Remainder of Erf 838 Sea Point, situated at Ocean Drive and Friars Road, Sea Point, shown hatched and lettered ABC on the attached sketch STC 3678 marked annexure A, in extent approximately 2 m<sup>2</sup>, to Brendon Body Corporate or their successors in title, be approved subject to inter alia the following conditions:

- a) A tariff rental of R631.00 per annum including 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 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 security 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 word aanbeveel dat die verhuring van 'n gedeelte van Stadsgrond, naamlik 'n gedeelte van restant erf 838 Seepunt, geleë te Ocean View-rylaan en Friarsweg, Seepunt, gearseer en met die letters ABC aangetoon op die aangehegte skets STC 3678, gemerk bylae A, ongeveer 2 m<sup>2</sup> groot, aan die Brendon-regspersoon, of sy regsopvolgers, goedgekeur word onderworpe onder andere aan die volgende voorwaardes dat:

- a) 'n Tariefhuurbedrag van R631 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;
- c) Die huurbedrag jaarliks aangepas sal word volgens die huurtariefstruktuur soos deur die Raad goedgekeur;
- d) Die eiendom slegs vir sekuriteitsdoeleindes 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;
- 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 koMhlaba weSixeko, osisiqephu sentsalela yesiza 838 Sea Point, esikwiOcean Drive neFriars Road, eSea Point, esibonakaliswe ngomzobo nangoonobumba abakhulu uABC kwiplani eqhotyoshelweyo enguSTC 3678 esiphawulwe kwisihlomelo A, esibukhulu obumalunga nama 2 m<sup>2</sup>, kwabeBrendon Body Corporate okanye kwabangena ezihlangwini zabo ngokwetayitile, ngokuxhomekeke ekuthotyelweni kwale miqathango ilandelayo:

- a) Makuhlawulwe ixabiso larenti elingamaR631 ngonyaka (kuquka iRhafuntengo) elibalwe ngexabiso elijoliswe kwixesha elo lonaniselwano. IiRhafu zokuhlala azihlawulwa;
- b) Uqeshiso luyakuthi luqhubekeke isithuba seminyaka elishumi;
- c) Irenti iyakuthi ilungelelaniswe rhoqo ngonyaka ngokwesakheko samaxabiso serenti njengoko siphunyezwe liBhunga;
- d) Ipropati le iyakuthi isetyenziselwe imibandela yezokhuseleko kuphela;

- 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 yenziwe/ihlawulwe ngalo naluphina uphuculo oluthe lwenziwa kwipropati.

## **6 DISCUSSION/CONTENTS**

### **6.1 BACKGROUND:**

Brendon Body Corporate (Applicant) has applied to lease a portion of Public Street to be closed by means of fence and gate, Remainder of Erf 838 Sea Point, situated at Ocean Drive View and Friars Road, Sea Point, shown on the line and lettered ABC on the attached sketch STC 3678 marked annexure A in extent approximately 2 m<sup>2</sup> for security purposes.

The application was circulated to all relevant branches for comment. No objections were raised by the branches to the proposed lease of the subject property.

The proposed lease of the subject property was duly advertised in terms of the stipulations of the Management of Certain of the City of Cape Town's Immovable Property Policy in two local newspapers on 22 May 2020, inviting the public to lodge written comments. A notice in this regard was also served on the relevant ward councilor and sub-council, the surrounding neighbours and the ratepayer's association and no objections were received by abutting owners.

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 month's cancellation period will be applicable.

### **6.2 CONSULTATION WITH INTERNAL BRANCHES:**

All the various Council Departments were consulted and have no objection to the lease and these conditions will form part of the Lease Agreement:

- i. Compliance with the gated development policy approved 28 November 2007;
- ii. All the affected erven/properties gaining access from the Northumbria Road has given consent to the proposed lease and closure of the road as indicated in the sketch plan included in this request
- iii. Free pedestrian movement to be provided;

- iv. No mechanical plant or vibrator type compactors may be used within three meter of any Open Serve Plant (I.E. any Telecommunication equipment above or below ground level);
- v. The position of our plant affected by the proposal is indicated as approximate and Claife Katsha must be contacted at Telephone No 081 348 0573 email address: ClaifeK@openserve.co.za at least 48 hours prior to commencement of the work, upon which the actual location of the Open Serve Plant will be indicated on site;
- vi. A written request must be submitted to Open Serve for consideration, should the applicant require our plant to be relocated. The cost of such a relocation will be recoverable from the applicant;
- vii. 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;
- viii. Should the applicant expose any Open Serve Plant, the safeguard thereof will be the applicant's full responsibility;
- ix. Failing to comply with above conditions or any special conditions addendum hereto will be regarded as gross negligence and the applicant will be held responsible for any damage or loss as a result thereof;
- x. No compensation will be payable for any improvements made to the property, with or without the consent of the Council, should the lease be terminated for any reason whatsoever.

### **6.3 VALUATION**

The application category fits within the tariff structure of the City approved on 27 May 2020;

### **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.
- 6.4.1 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.

## 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.

## 6.7 FINANCIAL DUE DILIGENCE

The applicant's 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"/>
------------------------------

## 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**

Tariff rental to the amount of R631.00 (Vat inclusive) per annum as calculated in accordance with the tariff structure.

### **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 are 16 February 2021. 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 and/or comments 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 or comments 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.

## **6.10 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:     STC 3678

**FOR FURTHER DETAIL, CONTACT:**

<b>NAME</b>	SANDISIWE TSHANDU 
<b>CONTACT NUMBERS</b>	021 400 6548
<b>E-MAIL ADDRESS</b>	SANDISIWE.TSHANDU@CAPETOWN.GOV.ZA
<b>DIRECTORATE</b>	ECONOMIC OPPORTUNITIES & ASSET MANAGEMENT
<b>FILE REF No</b>	CT14/3/6/1/2/1988/05/838
<b>MANAGER: PROPERTY HOLDING</b> RACHEL SCHNACKENBERG	Rachel Schnackenberg  <small>Digitally signed by Rachel Schnackenberg Date: 2021.05.11 10:03:15 +02'00'</small>

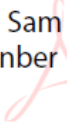
Andre Human   
Digitally signed by Andre Human  
Date: 2021.05.11 15:51:47  
+02'00'

Comment:

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

NAME ANDRE HUMAN

DATE \_\_\_\_\_

Jason Sam Liebenberg   
Digitally signed by Jason Sam Liebenberg  
Date: 2021.05.13  
11:44:13 +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 \_\_\_\_\_

Note: Paragraph 6.9, specifically under the heading  
"Stakeholder comments and recommendations"  
erroneously stipulates that the closing date for  
objections were on 21 May 2021.

# ANNEXURE A

