



REPORT TO SUBCOUNCIL 16

1 ITEM NUMBER 16 SUB 17/04/2021

2 SUBJECT

PROPOSED LEASE OF PORTION OF PUBLIC STREET, PORTION OF ERF 227 TAMBOERSKLOOF, BETWEEN UPPER BUITENGRACHT AND NEW CHURCH STREETS, TAMBOERSKLOOF FOR GARDENING PURPOSES: V & A MARINA ACCOMMODATION (PTY) LTD.

ONDERWERP

VOORGESTELDE VERHURING VAN GEDEELTE VAN OPENBARE STRAAT, GEDEELTE VAN ERF 227 TAMBOERSKLOOF, TUSSEN BO-BUITENGRACHT- EN NUWE KERKSTRAAT, TAMBOERSKLOOF VIR TUINMAAKDOELEINDES: V & A MARINA ACCOMMODATION (EDMS.) BPK.

ISIHLOKO

ISIPHAKAMISO SOKUQESHISWA KWESIQEPHU SESITALATO SOLUNTU ESISIQEPHU SESIZA 227 TAMBOERSKLOOF, PHAKATHI KWE UPPER BUITENGRACHT NE NEW CHURCH STREETS, TAMBOERSKLOOF, KULUNGISELELWA IMIBANDELA YEZASEGADINI: KWABE V & A MARINA ACCOMMODATION (PTY) LTD

M 2503

PTMS NO: 130008020

File Ref No: CT 14/3/6/1/2/1098/A00

(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	To consider the proposed lease for gardening purposes				
Site extent	272m ²				
Submission date	20 May 2015				
Current zoning	General Business 1				
Current usage	Gardening purposes				
Proposed usage	Gardening purposes				
WARD CLLR	NOTICE DATE		WARD		
Cllr. Patrick Chapple	26 February 2020		77		
Internal circulation date	1 December 2015				
Internal department comments	Branch comments were received and no objections were received.				
Public participation outcome summary	Advertised in the Cape Argus and Die Burger on 7 June 2019. 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 related rental 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		

4 RECOMMENDATIONS FOR CONSIDERATION AND COMMENT BY THE RELEVANT SUBCOUNCIL

It is recommended that the lease of portion of public street, portion of erf 227 Tamboerskloof situated between Upper Buitengracht and New Church Streets, Tamboerskloof, shown hatched and lettered ABCD on the attached sketch STC 2861 marked annexure A, in extent approximately 272m², to V&A Marina Accommodation (Pty) Ltd, owner of Erf 211 Tamboerskloof or its successors in title, be approved subject to inter alia the following conditions:

- A tariff rental of R 1,891.00 per annum including VAT calculated at the rate applicable at the time of transaction be payable. Rates not applicable;
- The rental will be adjusted annually in terms of the rental tariff structure as approved by Council;
- The lease will endure for a period of ten years;
- 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 'n openbare straat, gedeelte van erf 227 Tamboerskloof, geleë tussen Bo-Buitengracht- en Nuwe Kerkstraat, Tamboerskloof, aangetoon deur arsering en die letters ABCD op die aangehegte skets STC 2861 gemerk bylae A, ongeveer 272 m² groot, aan V&A Marina Accommodation (Edms.) Bpk. of sy regsopvolgers, goedgekeur word, onderworpe aan onder meer die volgende voorwaardes, naamlik dat:

- a) 'n Tariefhuurgeld van R1 891 per jaar, BTW uitgesluit - bereken teen die koers wat ten tye van die transaksie geld - betaal moet word. Eiendomsbelasting is nie van toepassing nie;
- b) Die huurgeld jaarliks aangepas sal word volgens die huurtariefstruktuur soos deur die Raad goedgekeur;
- c) Die huurtermyn tien jaar sal wees;
- d) Die eiendom slegs vir tuinmaakdoeleindes gebruik mag word;
- e) Onderworpe aan sodanige verdere voorwaardes opgelê deur die direkteur: eiendomsbestuur ingevolge haar gedelegeerde bevoegdheid;
- f) Onderworpe aan die nakoming van enige ander statutêre vereistes.

IZINDULULO UKUBA ZIQWALASELWE KWAYE KUVAKALISWE ULUVO LIBHUNGANA ELIFANELEKILEYO

Kundululwe ukuba makuphunyezwe uqeshiso lwesiqephu sesitrato soluntu, esisiqephu sesiza 227, esiphakathi kweUpper Buitengracht neNew Church Streets, eTamboerskloof, esibonakaliswe ngomzobo nanganobumba abakhulu uABCD kwiplani eqhotyoshelweyo enguSTC 2861, ephawulwe kwisihlomelo A, esibukhulu obumalunga nama 272 m², kwabakwa V&A Marina Accommodation (Pty) Ltd, abanini besiza 211 esiseTamboerskloof okanye kwabangena ezihlangwini zabo ngokwetayitile, ngokuxhomekeke ekuthotyolweni kwale miqathango ilandelayo:

- a) Makuhlawulwe ixabiso larenti eliliR1 891 ngonyaka (ngaphandle kweRhafuntengo) ngexabiso elibalwe ngexabiso elijoliswe kwixesha elo lonaniselwano. liRhafu zokuhlala azihlawulwa;
- b) Irenti iyakuthi ilungelelaniswe rhoqo ngonyaka ngokwesakheko samaxabiso serenti njengoko siphunyezwe liBhunga;

- c) Uqeshiso olu luyakuthi luqhubekeke isithuba seminyaka elishumi;
- d) Ipropati le iyakuthi isetyenziselwe imibandela yezasegadini kuphela;
- e) Ngokuxhomekeke kweminye imiqathango eyakuthi inyanzeliswe nguMlawuli woLawulo lwePropati esebenzisa amagunya akhe awagunyaziselweyo;
- f) Ngokuxhomekeke ekuthotyelweni kwayo nayiphina imimiselo yomthetho.

5 DISCUSSION/CONTENTS

5.1 BACKGROUND:

The lessee applied to lease the subject property for a 10 (TEN) year period for gardening purposes.

The proposal has been circulated to the relevant Council branches for comments and no objections were received. The proposal has also been circulated to the surrounding neighbours and the ratepayer's association and no objections were received by abutting owners.

This is non-viable City land. 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.

5.2 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:

The Utility Services, Water and Sanitation Department have no objection, subject to the following conditions:

- The access into the area shall be available 24 hours a day to personnel of the Water and Sanitation Department.
- The access control system shall be uncomplicated and to the satisfaction of the Water and Sanitation Department in order to provide immediate access to Water and Sanitation personnel, together with all vehicles and plant as may be required. In addition to vehicular access pedestrian gates incorporating Water pattern padlocks may be required.
- Where gates are fitted with padlocks the Water padlocking system shall be installed at the applicants/owners/residents cost. Details of the lock arrangements may be obtained from the Principle Water Inspector, telephone number (021) 400 6597.
- Neither the Water and Sanitation Department nor the Council will be liable for any damages or loss if any lock or gate has been forced or broken in order to gain access to attend the burst mains, blocked sewers or other emergencies such as inspections that must be carried out, meters that must be read, or any other cause outside the control of Council.
- The applicants/owners/residents shall bear the cost of the installation or repositioning of any valve, hydrant, meter or other fitting and all protective measures to the water installation that may be necessitated by the lease and servitude of land, or closure of Public Street.
- The ground surface over the water and sewer main shall not be altered in any way except with the prior approval of the Water and Sanitation Department.
- No trees shall be planted within 3m of the water and sewer mains.

Traffic Services has no objection subject to the following conditions:

- Emergency and service vehicles have access when and if necessary.

Electricity Services has no objection subject to the following conditions:

- Any alterations or deviations to electricity services necessary as a consequence of the proposal, or requested by the applicant, will be carried out at the applicant's cost.
- Please contact Mr. S Kemp (021) 444 8349 at Public Lighting for their conditions regarding the existing lighting installation.

- Electrical infrastructure may exist on the property or in its vicinity. A wayleave shall be obtained from Electricity Services Department before any excavation work may commence. In this regard please contact the Drawing and Record Centre Office North at (021) 444 2146.

Environmental and Heritage Management has no objection subject to the following conditions:

- A landscaping/improvement plan be submitted to Environmental and Heritage Management for approval, to be made part of leasing document before the signing thereof.
- That the applicant improves the landscaping of the area, by minimising hard surfacing, to improve the visual amenity in the area.

5.3 VALUATION

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

5.4 CONSTITUTIONAL AND POLICY IMPLICATIONS

- 5.4.1 The proposal complies with Regulation 34 of the Municipal Asset Transfer Regulations in that a right to use, control and manage a municipal capital asset may be granted.
- 5.4.2 Chapter C of Council's policy entitled the Management of Certain of the City of Cape Town's Immovable Property (approved by Council 26 August 2010, C 54/08/10), permits the leasing of immovable property.

5.5 FINANCIAL IMPLICATIONS

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

5.6 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.

5.7 FINANCIAL DUE DILIGENCE

The applicant's debt profile has been verified and it is confirmed that the debt profile is not in arrears.

5.8 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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5.9 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 rental to the amount of R 1,891.00 inclusive of VAT 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 7 June 2019. Closing dates for objections were 7 July 2019. 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 and/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.

5.10 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: Sketch Plan STC 2861

FOR FURTHER DETAILS CONTACT:

NAME	 DEON FRANKEN
CONTACT NUMBERS	(021) 400 1047
E-MAIL ADDRESS	DEON.FRANKEN@CAPETOWN.GOV.ZA
DIRECTORATE	ECONOMIC OPPORTUNITIES & ASSET MANAGEMENT
FILE REF No	CT 14/3/6/1/2/1098/A08

Comment:

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

NAME RACHEL SCHNACKENBERG

DATE _____

☐ 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 _____

TEL _____

DATE _____

Comment:

Certified as legally compliant based on the
contents of the report.

