

**AGENDA of the
Portfolio Committee: Infrastructure & Planning
18 May 2021
(Also the agenda for the Mayoral Committee Meeting: 26 May 2021)**

**2.
ERVEN 7695 AND 7442 KLEINMOND (SITUATED AT 51 NEMESIA AVENUE,
OVERHILLS): RENEWAL OF LEASE OF TWO MUNICIPAL PROPERTIES TO
CHILD WELFARE SOUTH AFRICA - KLEINMOND**

7/2/3/1

A Le Roux

Manager: Property Administration

12 April 2021

(028) 316 - 5623

1. Executive Summary

To obtain approval to enter into a further lease agreement with Child Welfare South Africa - Kleinmond (hereinafter referred to as "Siyabulela") for a period of 9 (NINE) years and 11 (ELEVEN) months in respect of two municipal properties, being Erf 7695 Kleinmond (2,523m² in extent) situated at 51 Nemesia Avenue, Kleinmond and the adjoining Erf 7442 Kleinmond (820m² in extent) situated at 7 GM Siyoni Street, Kleinmond (hereinafter referred to as "the Properties"), for the management of the Siyabulela Crèche and Pre-primary and related purposes. See the locality plan attached hereto marked Annexure "A".

2. Service Delivery and Budget Implementation Plan - IGNITE

Infrastructure and Planning
Property Administration

3. Compliance with Strategic Priorities

Provision of democratic, accountable and ethical governance
Creation and maintenance of a safe and healthy environment
Promotion of tourism, economic and social development

4. Delegated Authority

Executive Mayor

5. Legal Requirements

- Municipal Asset Transfer Regulations (R. 878 of 2008)
- Administration of Immovable Property Policy of the Overstrand Municipality (2015)

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6. Background/Discussion/Evaluation/Conclusion

Background/Discussion

Siyabulela has been leasing Erf 7695 Kleinmond since 2001. The last agreement was for a period of 9 (NINE) years and 11 (ELEVEN) months, which commenced on 1 August 2011 and will expire on 30 June 2021.

Erf 7442 Kleinmond, adjoining Erf 7695 Kleinmond, was previously leased by Vukuzenzele Nursery, and after the agreement was cancelled in 2011 Siyabulela applied in 2012 to lease Erf 7442 Kleinmond, as they required more classrooms to accommodate learners on their waiting list as well as learners from the Proteadorp and the Overhills informal settlement. An agreement was entered into for a period of 9 (NINE) years and 11 (ELEVEN) months, which commenced on 1 April 2012 and will expire on 28 February 2022. It has come to our attention that although this lease is for the whole Erf 7442 Kleinmond, the owner of Erf 7441 Kleinmond is illegally encroaching on Erf 7442 Kleinmond. The owner has built a wall and uses the $\pm 78\text{m}^2$ as an access to his property and to store his boats. This is being addressed as the $\pm 78\text{m}^2$ can be used by Siyabulela in the future.

Siyabulela received external funding in 2011 for the erection of two additional classrooms to accommodate more learners. An application for approval to build the two additional classrooms was submitted and approved by the Municipal Manager. It was confirmed that building plans were submitted for approval at the Municipality's Building Department.

Siyabulela applied for the renewal of both agreements and the two agreements will be merged to form one agreement for administrative purposes.

In 2018 the Manager: Social Development, Economic Development and Tourism, Mr Gerhard Smit, provided the following comment with regards to long term lease renewals of ECD centres:

"This department has been tasked with drawing-up an ECD policy which will, amongst others, look at suitable mechanisms to appoint external service providers to provide an ECD service from municipal facilities. The policy will have to undergo a thorough public participation process to ensure buy in from the community, it will therefore take some time but hopefully not more than two years."

It was requested that should renewals be approved, it should only be for a further period of 3 (THREE) years, giving the Directorate: Social Development and Economic Development and Tourism the needed time to compile and implement the above-mentioned policy. Up to date (since 2018)

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no feedback has been provided as to the status of the policy or when it will be finalised for approval and implementation. After discussion with the Manager: Property Administration, Ms Anja Le Roux, it has been recommended and subsequently approved in principle by the Municipal Manager that, should the renewal of the lease agreement be recommended, the renewal period be for a period of 9 (NINE) years and 11 (ELEVEN) months as the financial implications towards the publishing of the advert every 3 (THREE) years with respect to the public participation process will be too great for any ECD to bear and place an enormous strain on their finances.

Siyabulela delivers an important service to the community of Overhills and Proteadorp and no complaints regarding the use of the Properties by Siyabulela have been received from the community. The municipal account is paid to date.

Evaluation

A: Administration of Immovable Property Policy of the Overstrand Municipality:

The following conditions of the said Policy will apply:

Paragraph 4: “No application for the purchase, lease of or encroachment on immovable property (save for the instances mentioned in paragraphs 58 to 62 and 64.1 below) shall be processed unless the prescribed application fee as per tariff approved in the annual budget for that financial year has been paid, nor shall any proposed lease or encroachment (save for the instances mentioned in paragraphs 58 to 62 and 64.1 below) be advertised unless the applicant has confirmed, in writing, that he/she will bear all costs involved in such transaction including – but not limited to – legal, survey, re-zoning, sub-division, consolidations, advertisement, relocation or provision of services and, where applicable, a deposit as per prescribed rate to cover incidental costs has been paid.”

The application for renewal was received before the expiry of the last agreements and therefor no formal application form needs to be completed and no application fee is payable.

Paragraph 17: “Taking into consideration the nature and duration of the lease to be entered into, the leasing of immovable property may be affected by means of either:

17.1 a competitive process, which may include a closed or public tender or proposal call, specifically in circumstances listed in paragraph 18 below; or

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17.2 a direct lease.”

Paragraph 18: “A competitive process must at all times be followed in circumstances where:

- 18.1 the lease is for a long term with an income value in excess of R10 million;***
- 18.2 the lease is for a formal business premises with a market related rental;***
- 18.3 more than one party, in discretion of the municipality, is interested in the lease of the subject property; and/or***
- 18.4 by discretion of the municipality, a competitive process will best serve the interests of the community”.***

- The application is for a long-term lease with an estimated income value of less than R10 million as the monthly rental will be equal to the tariff for NPO’s in the annual budget, which tariff will escalate annually as approved in the Annual Budget.
- The management and use of the Properties will not be to gain profit as it will be managed by an NPO as an ECD (community-based facility). There is a zoning certificate confirming that Erf 7442 Kleinmond is zoned as Public Open Space and Erf 7695 Kleinmond is indicated on the GIS system as Authority Zone which needs to be confirmed and discussed further with Town Planning. Therefore, the Properties will not be used for a formal business premises as this is not allowed for in terms of the zoning.
- Lastly, Siyabulela is already well established and provides an important service to the community of Kleinmond, it can be argued that a competitive process will not be in the best interest of the community as the service of educating the children of the community is very important and as the financial implication to make the Properties available via the competitive bidding process will be more than that of the rental amount received.

It is therefore recommended that the Properties be leased directly to Siyabulela without following a competitive process.

Paragraph 20.1: “The Municipality may grant a long term lease of municipal immovable property with an income value of less than R10 million only after:

- a) The Accounting Officer has approved the lease in principle;***
- b) In the case of a direct lease, the proposed lease was advertised in terms of paragraph 10.1 and 10.2 above to invite the local community and other interested parties to submit comments or representations; and***

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- c) The Executive Mayor, as delegated authority, has approved that the right may be granted."***

The Accounting Officer (Municipal Manager) approved in principle the further lease of the Properties to Siyabulela, subject to a public participation process being followed and further subject to the approval by the Executive Mayor as delegated authority of the long-term lease.

The proposed lease was advertised in The Village News on 17 March 2021 for a 30 (THIRTY) day comment/objection period.

Paragraph 26: "In cases where a rental amount has been approved in the annual budget of the Municipality for certain types of leases and encroachments, the approved amount will be used for purposes of determining the rental amount."

The tariff for lease of municipal property to registered Social Care Institutions/Organisations/NPO's/PBO's/Sport facilities will be levied. The agreement will stipulate that the rental amount will escalate annually in accordance with the tariff as approved in the Annual Budget.

Paragraph 36: "All costs pertaining to a transaction, e.g. survey, advertisements, valuation, relocation or provision of services where necessary, shall be borne by the Lessee. The Municipality may, however, waive its right to claim all or any portion of the costs. Where necessary a deposit to cover the costs may be required."

Siyabulela will be liable for the payment of all costs relating to the renewal of the lease agreement which in this case so far is only the advertisement costs.

Paragraph 47: "Subject to paragraph 46 above, immovable property let by the Municipality shall be inspected at least once a year by the Municipality to ensure compliance with the terms and conditions of the agreement of sale or lease."

The Properties will be inspected by the Property Administration Department at least once a year.

It is further confirmed that the other Conditions of Lease as stipulated in paragraph 36 – 50 of the said policy will be included in the lease agreement with the Applicant.

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B: Advertisement/Notification

An advertisement for the lease of the Properties was placed in The Village News on 17 March 2021 for a 30 (THIRTY) day objection/comment period. No objections/comments were received.

Conclusion

With reference to the above discussion it is recommended that the lease of the Properties to Siyabulela be approved for a further period of 9 (NINE) years and 11 (ELEVEN) months from 1 July 2021 at a monthly rental amount as approved in the Annual Budget for the 2021/2022 financial year. Rental will be equivalent to an amount as stipulated in the 2021/2022 financial year.

7. Financial Implications

The Municipality stands to gain a monthly rental equivalent to an amount as will be stipulated in the 2021/2022 financial year as from 1 July 2021 where after the rental amount will escalate every year on the 1st of July in accordance with the tariffs stipulated in the Annual Budget as approved by Council. All expenses pertaining to the proposed lease will be borne by Siyabulela.

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

Manager: Social Development: Mr G Smit – (028) 313 8035

“I have no objections to the lease renewal. Child Welfare South Africa Kleinmond has been managing the ECD facility very successfully for a number of years.”

Senior Town Planner: Ms H van der Stoep – (028) 313 8906

“The property is zoned Public Space and the creche has been in existence for quite some time. No objection.”

Comments from Property Administration: The comment of Ms van der Stoep refers to the one property. The zoning of Erf 7695 Kleinmond will be confirmed with Town Planning and rectified if necessary.

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Building Inspector: Ms T Brewell – (028) 271 8433

“Kindly note that the building on erf 7442 Kleinmond has not been issued with an occupancy certificate. A final inspection will have to be arranged with the Building Department.”

Comments from Property Administration: The necessary arrangements will be made for a final inspection as required by the Building Department.

Senior Manager: Expenditure and Assets: Mr J Vorster - (028) 313 8046

“As this is an income generating proposal involving an institution who delivers a service to the community of Kleinmond, with no intention to dispose of the asset(s), there is no objection to the report.”

10. Annexures

Annexure A: Locality Map

RECOMMENDATION:

1. that the lease of municipal properties, being Erf 7695 Kleinmond (2,523m² in extent) and Erf 7442 Kleinmond (820m² in extent), to Child Welfare South Africa - Kleinmond, for the purpose of operating the Siyabulela Crèche and Pre-primary at a rental amount equivalent to an amount as will be stipulated in the 2021/2022 financial year for a period of 9 (NINE) years and 11 (ELEVEN) months as from 1 July 2021 in terms of the Administration of Immovable Property Policy of the Overstrand Municipality, **be approved**; and
2. that the rental amount mentioned in 1 above escalate every year on the 1st of July in accordance with the tariffs stipulated in the Annual Budget as approved by Council.

RESPONSIBLE OFFICIAL:	R OCTOBER
TARGET DATE FOR IMPLEMENTATION:	30 JUNE 2021
TARGET DATE TO INFORM APPLICANT:	16 JUNE 2021
TARGET DATE TO INFORM OBJECTOR:	N/A

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OVERHILLS): RENEWAL OF LEASE OF TWO MUNICIPAL PROPERTIES TO CHILD
WELFARE SOUTH AFRICA - KLEINMOND**

7/2/3/1

A Le Roux

12 April 2021

Manager: Property Administration

(028) 316 - 5623

**THIS MATTER SERVED BEFORE THE JOINT PORTFOLIO COMMITTEE ON
18 MAY 2021, WHICH COMMITTEE SUPPORTED THE RECOMMENDATION**

RESPONSIBLE OFFICIAL:

R OCTOBER

TARGET DATE FOR IMPLEMENTATION:

30 JUNE 2021

TARGET DATE TO INFORM APPLICANT:

16 JUNE 2021

TARGET DATE TO INFORM OBJECTOR:

N/A

ANNEXURE A

