

**AGENDA of the  
Portfolio Committee : Infrastructure & Planning  
17 November 2015  
(Also the agenda for the Mayoral Committee Meeting : 25 November 2015)**

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**17.  
KLEINMOND HARBOUR DEVELOPMENT PROJECT: CLOSE OUT REPORT**

**Erf 5462, Kleinmond  
B Louw / A Cairns  
16 September 2015**

**(028) 316 3724**

**Hermanus Administration**

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**1. Executive Summary**

The purpose of this submission is to inform Council that the Kleinmond Harbour Development Project has now been completed, that there is a balance of R18 410.87 remaining, which will be used for additional repair work on the slipway, that the portion of land that was purchased for the purpose of completing the traffic circle at the entrance to the harbour must still be subdivided, rezoned and transferred to Council and that the KCIH situation, which will be discussed in detail later in the report, must be taken note of.

The full background of the project was discussed in a submission to Council on 26 May 2010 and in that submission approval was sought for the alienation of Municipal land and for the basis of dealing with community structures. A copy of the Minutes of that Council Meeting is attached as Annexure A.

During May 2011 another submission was made to Council, seeking approval to adjust the amounts that had to be paid to the Municipality by Wharfside Developments and in that submission approval was sought to reduce the agreed selling price of R24 000 000.00 to R21 000 000.00 as a result of actions and demands made by community based groupings. A copy of the Minutes of that Council Meeting is attached as Annexure B.

A third submission was made to Council during May 2013, in which approval was sought to adjust the timeframes of the amounts that had to be paid by Wharfside to the Municipality and the amendment of the amounts allocated to certain components of the development. A copy of the Minutes of that Council Meeting is attached as Annexure C.

The final portion of the development has now been completed and the contract amount for that work amounted to R6 722 274.15 of which R400 000.00 had to be paid in cash to the Municipality and the rest towards the upgrading works. The balance of R18 410.87 remains from this portion but as mentioned above, will now be used in the further upgrading of the slipway. The extent of the completed work will be discussed later in the submission.

The portion of land purchased by Wharfside Developments in order to complete the traffic circle at Luckhoff- and Harbour Roads, must still be subdivided, rezoned and transferred to Council.

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**2. Service Delivery and Budget Implementation Plan - IGNITE**

Infrastructure and Planning  
Housing Planning

**3. Compliance with Strategic Priorities**

Provision of democratic, accountable and ethical governance  
Promotion of tourism, economic and social development

**4. Delegated Authority**

None

**5. Legal Requirements**

- Council's Administration of Immovable Property Policy;
- Sections 14 and 33 of Local Government: Municipal Finance Management Act, 2003 (Act 56 of 2008)
- Municipal Asset Transfer Regulations, 2008 (No R. 878 of 2008)
- Land Use Planning Ordinance, 1985 (Ordinance 15 of 1985)

**6. Background/Discussion/Evaluation/Conclusion**

**Background**

As stated previously, the purpose of this submission is to inform Council of the following:

- That the Kleinmond Harbour Development Project, which entailed making the harbour / slipway more user-friendly and safe as well as the upgrading of infrastructure that will enhance development, has now been completed;
- That there is a balance of R18 410.87 remaining of the total R21 000 000.00 and that this will now be spent on additional upgrading work on the slipway;
- That the portion of land purchased in order to complete the traffic circle at Luckhoff- and Harbour Roads, must still be subdivided, rezoned and transferred to Council and that this process will be starting now.
- That note be taken of the position with regards to KCIH, regarding the R300 000.00 which has been paid out to the entity and for which no evidence of expenditure have been provided to the Municipality as yet, and the remaining balance of R700 000.00 will only be paid out once

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KCIH provided the Municipality with acceptable information on the intended expenditure of the balance.

As mentioned in the Executive Summary, various reports regarding the development has served before Council. During May 2010 Council resolved as follows:

- “1. *that the valuation, as submitted by Rode and Associates for the amount of R20 560 000 and of DDP Valuers for the amount of R14 300 000, be accepted.*
2. *That the offer for the municipal land, for the amount of R24 000 000 be accepted and the sale thereof, in terms of Council’s Administration of Immovable Property Policy, be approved on the basis of the draft Deed of Sale, inter alia that:*
  - (a) *R10 100 000.00 be allocated for the provision of bulk infrastructure;*
  - (b) *R9 900 000 be allocated towards the upgrading of the harbour below the High Water Mark (HWM)*
  - (c) *R3 000 000.00 be allocated as a contribution towards community upliftment; and*
  - (d) *R1 000 000.00 be allocated as a contribution towards the provision of a fish processing facility.*
3. *That in dealing with the community based Forum the following principles be accepted:*
  - (a) *That the Forum be transformed into a Legal Entity;*
  - (b) *That the previous decision of Council regarding the sale of a Portion of Erf 5462 to the now defunct KCIH, not be implemented but that the Forum instead acquire a right to a fish processing facility near the slipway on Council owned land;*
  - (c) *That the Forum (and its transformed successor) utilise the services of OLEDA as its financial caretaker;*
  - (d) *That the community, through the Forum, be given direct benefit from the proceeds of the sale to the values of R3 000 000, in lieu of the 70% share that KCIH would have acquired in Wharfside Developments; and*
  - (e) *That the Municipality will undertake (through OLEDA) a re-evaluation and re-planning of the harbour precinct.*
4. *That the following specific conditions will apply:*
  - (a) *The funds allocated to the upgrading of the harbour below the High Water Mark only be utilised once an appropriate and acceptable lease agreement has been concluded with the relevant Authorities; and*

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- (b) *Funds be allocated to community based projects only be utilised once the Forum has transferred itself into a Legal entity, failing which the Council will re-allocate the funds for community based projects of its own choosing. The Municipal Manager to report on progress in this regard after 6 months.*
5. *That it be accepted, in terms of Section 14 of the Municipal Finance Management Act 56 of 2003, that the properties to be alienated to Wharfside Developments are not needed to provide the minimum level of basic municipal services and that it further be accepted that fair market value as well as economic- and community value will be received in exchange for the property.*
6. *That it be noted that in terms of Section 33 of the Municipal Finance Management Act 56 of 2003, the contract with Wharfside Developments will not impose financial obligations on the Municipality beyond the three years covered in the annual budget for the 2010/2011 financial year.*
7. *That cognisance be taken of the fact that the required processes in terms of the Land Use Planning Ordinance, 1985 for the rezoning and subdivision of the properties to be sold, have been concluded.”*

The second submission to Council during April 2011 dealt with the adjustments that had to be made to the amounts which were to be paid by Wharfside Developments to the Municipality as a result of actions and demands made by community based groupings. The report specifically dealt with the change in the selling price from R24 000 000.00 to R21 000 000.00 due to the exclusion of the R3 000 000.00 which was intended for community upliftment. Council resolved as follows:

- “1. *That Council take note of the final Deed of Sale as contained in the Third Addendum to the Agreement with Wharfside Developments (Kleinmond) (Pty) Ltd;*
2. *That Council take note of the following allocations to be spent in accordance with the Third Addendum:*
- (a) *R10 100 000 be allocated to the provision of bulk infrastructure;*
- (b) *R9 900 000 be allocated towards the upgrading of the harbour below the High Water Mark;*
- (c) *R1 000 000 be allocated as a contribution towards the provision of community structures and development on Erf 5456 (municipal land) around the harbour.”*

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The third submission made to Council during May 2013 dealt with adjustments and amendments to the amounts and timeframes of the amounts to be paid by Wharfside to the Municipality. Council resolved as follows:

- “1. that the extension of payment for municipal land be approved as follows:*
- (a) That the payment for Phase 3 with date 9 July 2013 for the amount of R7 000 000.00 be substituted with new Phases 3 and 4, with last dates for payment 9 January 2014 and 9 July 2014 for the amounts of R3 500 000.00 respectively, and*
  - (b) That Wharfside Developments (Kleinmond) (Pty) Ltd compensates the Municipality for loss in value of outstanding amounts at a rate of 1% per month from 10 July 2013; payable monthly in advance on outstanding amounts.*
- 2. That the following allocations to be spent, be noted:*
- (a) R10 126 198.61 be allocated to the provision of bulk civil and electrical infrastructure;*
  - (b) R999 876.00 be allocated towards the cost of land for municipal purposes;*
  - (c) R1 500 000.00 be allocated for rezoning costs;*
  - (d) R7 373 925.39 be allocated towards upgrading of the harbour below the high water mark; and*
  - (e) R1 000 000.00 be allocated as a contribution towards the provision of community structures and development on Erf 5456, Kleinmond (municipal land) around the harbour.”*

The 1% interest that had to be paid on all outstanding amounts on a monthly basis, as set out in condition 1(b) above, was paid accordingly by Wharfside every month. The spending of the last portion of the R21 000 000.00, which amounts to R6 722 274.15, will now be dealt with in the Discussion. This amount is made up of the R400 000.00 which must be paid in cash to the Municipality as the final portion of the R1 000 000.00 allocated towards provision of community structures and development on Erf 5456, Kleinmond, around the harbour and the R6 322 274.15, which must be spent on the upgrading of the harbour below the high water mark. A schedule of how the first portion of R14 277 725.86 was spent, is attached as Annexure D, and it forms part of the Fourth Addendum to the Agreement between the Municipality and Wharfside as approved during the May 2013 submission to Council.

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### Discussion

As set out in the conditions of all three previous submissions, an allocation was made for the upgrading of the harbour below the high water mark. The last submission stated that the amount to be spent is R7 373 925.39, however, it should be noted that a portion of this allocation was spent on the access road to the slipway and harbour parking in front of the slipway. At the time of approval of this Addendum, the expenditure to date was R14 277 725.86, which included the actual civil and infrastructure costs as well as the R600 000.00 cash payment to the Municipality as part of the R1 000 000.00 community contribution. This amount therefore also included the funds spent on the access road and harbour parking and the balance outstanding therefore amounted to R6 722 274.15 of which R6 322 274.15 had to be spent on the physical upgrading costs and the balance of R400 000.00 had to be paid in cash to the Municipality. A copy of the actual costs as set out in the Fourth Addendum is attached as Annexure D.

The upgrading work for the balance of the R6 322 274.15 has now been completed and the expenditure is summarised below. Please note that it has been split into Operational and Capital Expenditure.

#### Capital:

Asset description	Completed Value
Stormwater\Reticulation Pipeline\Weholite\450mm	R88 202.64
Kleinmond Harbour\Common Asset\Fish Tables	R55 508.86
Kleinmond Harbour\Common Asset\Public Toilets	R444 306.12
<b>TOTAL</b>	<b>R588 017.62</b>

#### Operational:

<b>Kleinmond Harbour Operational Costs</b>	
Underpinning and toe protection of the outer seawall with concrete	R579 213.42
Repair of the eastern inner seawall	R631 526.24
Removal of the submerged concrete blocks at the end of the western inner seawall and repair of the end of this seawall	R74 031.90
The removal of loose rock from the inner harbour basin	R886 798.91
Repair work and possible extensions to the concrete slipway	R522 353.85
Repair of jetty (quay) on the inside of the inner harbour basin	R2 031 941.41
Repair of two footpaths	R989 979.93
<b>TOTAL</b>	<b>R5 715 845.66</b>

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**The total expenditure for both Operational and Capital costs amounts to R6 303 863.28.**

The remaining balance of R18 410.87, which as explained in the Executive Summary, will now be utilised for additional upgrading work to the slipway in the harbour. The additional work that's required to the slipway is necessary after receiving numerous complaints and queries from the community regarding damage to their boats and vehicles when launching or returning from sea. During construction the immediate seabed was destabilised causing washout of material. There is evidence that wave action also removed smaller stones from this area and created a bigger problem. A proposed concrete ramp / toe at the end is likely to be the best solution and designs for this is now being investigated and that is what the remaining balance will be used for.

In all the previous submissions it is noted that a contribution of R1 000 000.00 must be **allocated towards the provision of community structures and development on Erf 5456, Kleinmond**, which is municipal owned land. The R1 000 000.00 was paid in cash to the Municipality by Wharfside as stipulated in the first submission to Council during May. The submission further stated that the community Forum had to be transformed into a legal entity which was subsequently done and this entity is known as KCIH. Subsequently the first tranche of R300 000.00 was paid over to KCIH during October 2012, and they were informed in a letter, dated 09 October 2012, that the Municipality must be informed how the funds will be utilised. During November 2012, another request was issued to KCIH by the Municipality to provide evidence of how the first tranche would be spent. During February 2013, the Municipality received a request from KCIH to pay out the second tranche of R300 000.00 and attached a budget indicating the expenditure of the first tranche, however no invoices of payments were attached. The Municipality then responded to this and the budget attachment was retracted by KCIH, and once again the Municipality requested proof of expenditure for the R300 000.00 but none was received. Following this, numerous requests were issued during 2014 and no evidence was submitted. Subsequently no further funds were released to KCIH and the remaining R700 000.00 is still in the Municipalities possession. Copies of all the correspondence between the Municipality and KCIH, is attached as Annexure E.

In light of the above, Council is requested to take note of the current situation and it is recommended that the remaining balance of R700 000.00 only be released to KCIH once they have adhered to requests of proof of expenditure of the R300 000.00 and provided the Municipality with acceptable information on the intended expenditure of the balance.

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### **Conclusion**

In light of the above Background and Discussion, it is recommended that Council takes note of the completion of the project, of the utilisation and spending of the last portion of the funds and that the remaining balance of R18 410.87 will be used towards the additional upgrading required for the slipway as well as the process that will now be undertaken to complete the subdivision, rezoning and transfer of the portion of land purchased to complete the Luckhoff- and Harbour Roads traffic circle. It is also recommended that Council takes note of the current situation with KCIH and that the remaining balance of R700 000.00 only be released to KCIH once they have adhered to requests of proof of expenditure of the R300 000.00 and provided the Municipality with acceptable information on the intended expenditure of the balance.

### **7. Financial Implications**

There are no financial implications for the Municipality as the project is now completed, except for additional work on the slipway for which the balance of R18 410.87 will be utilised.

### **8. Staff Implications**

None

### **9. Comments from other Departments, Divisions and Administrations**

None

### **10. Annexures**

- Annexure A: Copy of May 2010 Council Minutes
- Annexure B: Copy of May 2011 Council Minutes
- Annexure C: Copy of May 2013 Council Minutes
- Annexure D: Copy of Fourth Addendum
- Annexure E: Copies of correspondence between the Municipality & KCIH

### **RECOMMENDATION TO THE COUNCIL:**

1. that the fact that the Kleinmond Harbour Project has now been completed, **be noted**;
2. that the utilisation of the remaining balance of R18 410.87, which will be utilised for the additional work needed at the slipway, **be noted**;

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3. that the process that will now be undertaken to complete the subdivision, rezoning and transfer of the portion of land purchased to complete the Luckhoff- and Harbour Roads traffic circle, **be noted**; and
4. that the withholding of the remaining balance of R700 000.00 which is to be paid out to KCIH until such time that they have adhered to requests of proof of expenditure of the R300 000.00 and provided the Municipality with acceptable information on the intended expenditure of the balance, **be noted**.

**RESPONSIBLE OFFICIAL :**

**B LOUW / A CAIRNS**

**TARGET DATE FOR IMPLEMENTATION :**

**NOVEMBER 2015**

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KLEINMOND HARBOUR DEVELOPMENT PROJECT: CLOSE OUT REPORT**

**Erf 5462, Kleinmond  
B Louw / A Cairns  
16 September 2015**

**(028) 316 3724**

**Hermanus Administration**

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**THIS MATTER SERVED BEFORE THE JOINT PORTFOLIO COMMITTEE ON  
17 NOVEMBER 2015, WHICH COMMITTEE RECOMMENDED AS FOLLOWS:**

**RECOMMENDATION TO THE COUNCIL:**

1. that the fact that the Kleinmond Harbour Project has now been completed, **be noted**;
2. that the utilisation of the remaining balance of R18 410.87, which will be utilised for the additional work needed at the slipway, **be noted**;
3. that the process that will now be undertaken to complete the subdivision, rezoning and transfer of the portion of land purchased to complete the Luckhoff- and Harbour Roads traffic circle, **be noted**; and
4. that the withholding of the remaining balance of R700 000.00 which is to be paid out to KCIH until such time that they have adhered to requests of proof of expenditure of the R300 000.00 and provided the Municipality with acceptable information on the intended expenditure of the balance within six (6) months, **be noted**.

**RESPONSIBLE OFFICIAL :**

**B LOUW / A CAIRNS**

**TARGET DATE FOR IMPLEMENTATION :**

**NOVEMBER 2015**