

**AGENDA of the
Portfolio Committee : Infrastructure & Planning
19 October 2021
(Also the agenda for the Mayoral Committee Meeting : 28 October 2021)**

3.

A PORTION OF PORTION 1 OF THE FARM NO. 562 SITUATED OUTSIDE KLEINMOND: DEVIATION FROM PARAGRAPH 18 OF THE ADMINISTRATION OF IMMOVABLE PROPERTY POLICY OF 2015 ALLOWING THE MUNICIPALITY TO ENTER INTO A DIRECT LEASE WITH NEON BLUE (PTY) LTD

7/2/3/1

R Marinus

Acting Manager: Property Administration

12 August 2021

(028) 316 5609

1. Executive Summary

To obtain approval from the Executive Mayor to enter into a long-term lease agreement with Neon Blue (Pty) Ltd, hereinafter referred to as “the Applicant”, in respect of a portion of portion 1 of Farm No. 562 situated outside Kleinmond (±13,5ha in extent), hereinafter referred to as “the Property”, for the purposes of developing, constructing and managing a renewable energy generation plant and related/associated activities; and

To obtain approval from Council for the deviation from paragraph 18 of the Administration of Immovable Property Policy of 2015 allowing the Municipality to enter into a direct lease agreement with the Applicant in respect the Property for the purposes of developing, constructing and managing a renewable energy generation plant and related/associated activities without following a competitive bidding process. The locality map is attached hereto as “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
Promotion of tourism, economic and social development

4. Delegated Authority

Partly delegated to the Executive Mayor

5. Legal Requirements

- Administration of Immovable Property Policy of the Overstrand Municipality (2015)

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- Municipal Asset Transfer Regulations (R. 878 of 2008)

6. Background/Discussion/Evaluation/Conclusion

Background

An application was received from the Applicant to lease the Property for the purpose of developing a Solar Photo Voltaic ("PV") project with an Electrical Vehicle ("EV") charging station. The Applicant has aligned itself with the National Cleaner Production Centre South Africa, Standard Bank, Rockwell Designs, the Western Cape Government and the Department of Trade and Industry in order to enter the independent power producers ("IPP") space. The proposed lease term is 25 (TWENTY FIVE) years, which will be discussed in full in this report.

Discussion

The Applicant applied for approximately 17 hectares, although the submitted locality map only indicates approximately 13,5 hectares. The primary objective is to produce power, given the current challenges caused by load shedding. It is with this in mind that the Applicant aims to enter the IPP space under a power purchase agreement but their objective is also to attract the youth in the surrounding communities to the solar PV and EV field. They further hope that the project will become a tourist attraction and a regular EV charging point as tourists make their way along Clarence Drive.

The Applicant will have to submit a site development plan. Furthermore, the Applicant will have to adhere to all relevant legislation (NEMA, MFMA, Systems Act, Energy regulations, Water Act, etc.), and obtain all the necessary permits and licences required for the proposed use, and if costs are involved, it will be for the Applicant's account. As there are so many processes to follow and licences to apply for, the delegated authority approved the entering into of a lease agreement that is subject to a public participation process being followed, a valuation being done, the approval of the long-term lease by the Executive Mayor, Council's approval of the deviation from paragraph 18 of the Administration of Immovable Property Policy of 2015 and all the necessary permits and licences required for the proposed use being obtained.

The Applicant will be informed that any approval given in terms of the proposed lease and use of the Property will not guarantee that the Municipality/Eskom will purchase electricity from it. This however is subject to any changes in legislation in this regard and can be revised in the future. If revised and possible in terms of legislation for the Municipality to purchase energy directly from the Applicant, the Municipality will request a right of first

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refusal to buy electricity from the Applicant, subject thereto that all the legislative processes are followed.

As this lease agreement will be for a period longer than 10 (TEN) years, a lease diagram must be prepared for registration of the lease against the title deed of the Property. The Applicant will be responsible for the costs of preparing the lease diagram and registration of the lease agreement.

Evaluation

A. Administration of Immoveable Property Policy of the Overstrand Municipality

The following conditions of said policy 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 Applicant has paid the application fee.

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

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

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***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 proposed lease period is 25 (TWENTY-FIVE) years with a rental free period of no longer than 5 (FIVE) years in order to give the Applicant an opportunity to obtain all the necessary licences, approvals and to complete the development and to commission the solar plant. If this is however finalised before the expiry of the 5 (FIVE) years, the rental clause will be implemented earlier. The total income value of the proposed lease can only be determined once the market related rental is obtained. This will be done as soon as possible at the cost of the Applicant. If it is found that the proposed income will be in excess of R10million an additional public participation process will be followed in terms of paragraph 19 of the Administration of Immovable Property Policy of 2015 for which a separate memorandum will be submitted to the Municipal Manager (Accounting Officer).

The proposed lease area is not a business site, but zoned Authority as the Municipality’s Waste Water Treatment Works is situated on the same property. The rental payable will however be market related but will be calculated on the current use of the Property taking into consideration all the processes, licences and approvals that must still be followed/obtained.

Another application was also received from Aquaculture Professional (Pty) Ltd to use the same property for the purpose of developing an abalone farm. They were informed that the Municipality is currently investigating the best possible use whereafter the Property will be made available. Since sending them the letter in August 2020, no response was received. It is however suggested that they be informed of the outcome of the investigation. At this stage the proposed use of the Property as a solar plant by the Applicant is more in line with the needs of the community, specifically to address the blackouts, the need for job creation, etc. and a positive move towards renewable energy for which the Municipality is one of the pilot municipalities.

In light of the above approval is requested from Council for the deviation from the Administration of Immovable Property Policy (2015) insofar paragraph 18 thereof allowing the Municipality to enter into a direct lease with the Applicant, subject to specific conditions.

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:*

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

The Accounting Officer (Municipal Manager) approved in principle the lease of the Property to the Applicant on condition that the public participation process is followed and further subject to the approval from the Executive Mayor.

The proposed lease will be advertised as required once the market related rental is determined. Should valid objections be received during the public participation process the matter will be referred back to the Executive Mayor.

Simultaneous with this request for a deviation, the further request is for the approval by the Executive Mayor of the long-term rental.

Paragraph 24: *“The fair market value for the alienation of, the rental amount for the leasing or compensation payable for a servitude over municipal immovable property shall be determined by an independent professional valuer or professional associated valuer registered in terms of the Property Valuers Profession Act, 2000 (Act 47 of 2000), or any ensuing act at the cost of the purchaser (in the case of a direct sale) or lessee (in the case of a direct lease)/servitude holder (in the case of a servitude”.*

The market related rental will be determined as soon as possible. The value will be determined taking into consideration the current use and zoning of the Property as well as what the Applicant will have to do to ensure that the Property can be used as a solar plant.

As the Applicant will invest a considerable amount of money in investment on the Property to establish the solar plant, and as several approvals will have to be obtained, it will be recommended that rental only be paid after and if all the approvals are obtained and the solar plant can be operated (a maximum period of 5 years from date of commencement will be allowed with no extension). If not obtained, the lease will lapse. Thus, all costs incurred will be at the sole risk of the Applicant.

Paragraph 36: *“All costs pertaining to a transaction, e.g. survey, advertisements, valuation, relocation or provision of services where*

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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.”

This is an explicit condition of the lease.

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 Property 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.

B. Advertisement/Notification

An advertisement for the lease of the Property will be published for a 30 (THIRTY) day objection/comment period as soon as the market related rental is determined. Should valid objections be received during the public participation process the matter will be referred back to the Executive Mayor.

Conclusion

With reference to the above discussion, it is recommended that

- (a) The Executive Mayor approves the long-term lease of a portion of portion 1 of Farm No. 562 situated outside Kleinmond (±13,5ha in extent) for a period of 25 (TWENTY-FIVE) years for the purposes of developing, constructing and managing a renewable energy generation plant and related/associated activities at a market related rental amount that will be determined by a Valuer (to be paid once the plant is operational, but limited to 5 years from date of commencement of the lease agreement), subject to a public participation process being followed; and
- (b) Council approves the deviation from paragraph 18 of the Administration of Immoveable Property Policy of 2015 allowing the Municipality to enter into a lease agreement with the Applicant in respect the Property for the purposes of developing, constructing and managing a renewable energy generation plant and related/associated activities without following a competitive bidding process.

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7. Financial Implications

The Municipality stands to gain a market related rental amount for the lease of the Property for the next 25 (TWENTY-FIVE) years.

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

Senior Manager: Expenditure & Assets, Hermanus – J Vorster 028 313 8046

“As this is a revenue generating proposal with no intention to dispose of the asset, there is no objection.”

Senior Manager: Kleinmond Administration – Mr D Lakey 028 271 8413

“Support the application, subject to full compliance with all relevant legislation.”

Deputy Director: Engineering Planning – Mr H Blignaut 028 313 5047

“The existing Kleinmond Wastewater Treatment Plant is situated on the same property as the proposed lease area. An upgrade of the wastewater treatment plant is planned in the near future on the same footprint as the existing plant and is currently in the environmental impact assessment phase. Longer term future upgrades of the wastewater treatment plant may require additional land. The area of the proposed lease area as indicated on the locality plan should therefore not be increased at any stage. The proposed solar plant may not result in any negative impacts on the operations of the wastewater treatment plant.”

Property Administration: Any concerns will be addressed in the proposed lease agreement. From the above, it seems as if the lease area will be limited to ±13,5ha as per the locality map the Applicant submitted.

Manager: Engineering Services – Mr R Andrew 028 313 5073

“No municipal services are (immediately) available for the proposed development. This needs to be confirmed by the Operational Department. The applicant will be responsible for the provision of water and sewer bulk services and/or any link services that may be required and any bulk levies that may be payable. The supply of potable water and sewerage disposal shall be

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done in line with all statutory requirements, especially the Department of Water Affairs' standards."

Senior Manager: Building Services – Mr L Coetzee 028 313 8091

"BUILDING CONTROL has no objection. Please note that any proposed building/s and/or structures require a Building Plan application. The Building Plan application for this solar PV charging station will require a Building plan application which should include the appointment of a competent person ensuring the integrity of the structures that will hold the PV panels. The Building Plan application has to comply with NBR and all other applicable law."

Senior Manager: Operational Services – Mr D van Rhodie 028 271 8431

"Operational Services Kleinmond have no objection to application. Application should also be distributed to H Blignaut for comments because the Sewerage treatment plant is on the same property. Any planned extension to the sewerage treatment plant will be on the portion under discussion."

Senior Town Planner – Ms H van der Stoep 028 313 8900

"The property is zoned for Authority Use. The application will be for a consent use. Secondly the coastal management line and environmental overlay needs to be discussed with the Environmental Section. An EIA will be necessary. Why such a big portion of land, since the Municipality may extend its present operations on the property and then sufficient land must be available for Municipal Use."

In principle there is no objection, however the environmental issues need to be addressed and a visual study to establish the impact of such a venture, especially with to the Palmiet Estuary and verification with regard to Title Deed restrictions if any."

Property Administration: Mr Kuchar has indicated that the restriction contained in the title deed was lifted.

Senior Superintendent Metering & Distribution (Electrical) – Mr R Buckle 028 271 8484

"Concerning erf 562, the Electrical Department Overstrand has no comment. Consider: Contact Eskom about this matter."

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Chief: Traffic Operations, Admin, Logistic & Fines – Mr X Titus 028 313 5033

“Traffic have no objection pertaining traffic related matters.”

Environmental Officer Kleinmond – Ms T Zweig 028 271 8420

“As per the National Environmental Management Act (107 of 1998) the following applies to the transmission and distribution of electricity and development on the aforementioned property and will require the applicants undergo the Environmental Impact Authorisation process for Environmental Authorisation from the Department of Environmental Affairs and Development Planning (DEA &DP).

Listing Notice 1 (2017) Activity 1.

The development of facilities or infrastructure for the generation of electricity from a renewable resource where—

- (i) the electricity output is more than 10 megawatts but less than 20 megawatts; or*
- (ii) the output is 10 megawatts or less but the total extent of the facility covers an area in excess of 1 hectare;*

excluding where such development of facilities or infrastructure is for photovoltaic installations and occurs—

- (a) within an urban area; or*
- (b) on existing infrastructure.*

Activity 11.

The development of facilities or infrastructure for the transmission and distribution of electricity—

- (i) outside urban areas or industrial complexes with a capacity of more than 33 but less than 275 kilovolts; or*
- (ii) inside urban areas or industrial complexes with a capacity of 275 kilovolts or more;*

Portion 1 of 562 is located on Endangered Hangklip Sand Fynbos (map attached) and contains both a Wetland Critical Biodiversity Area (CBA) and a Terrestrial CBA (map attached). Therefore the following NEMA Regulations apply:

Listing Notice 3 (2017)

Activity 12.

The clearance of an area of 300 square metres or more of indigenous vegetation except where such clearance of indigenous vegetation is required for maintenance purposes undertaken in accordance with a maintenance management plan.

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Western Cape:

- i. Within any critically endangered or endangered ecosystem listed in terms of section 52 of the NEMBA or prior to the publication of such a list, within an area that has been identified as critically endangered in the National Spatial Biodiversity Assessment 2004;*
- ii. Within critical biodiversity areas identified in bioregional plans;*
- iii. Within the littoral active zone or 100 metres inland from high water mark of the sea or an estuarine functional zone, whichever distance is the greater, excluding where such removal will occur behind the development setback line on erven in urban areas;*
- iv. On land, where, at the time of the coming into effect of this Notice or thereafter such land was zoned open space, conservation or had an equivalent zoning; or*
- v. On land designated for protection or conservation purposes in an Environmental Management Framework adopted in the prescribed manner, a Spatial Development Framework adopted by the MEC or Minister.”*

10. Annexures

Annexure A: Locality Plan

RECOMMENDATION TO THE EXECUTIVE MAYOR:

1. that the long-term lease of municipal property, being a portion of portion 1 of Farm No. 562 situated outside Kleinmond ($\pm 13,5$ ha in extent), to Neon Blue (Pty) Ltd for the purposes of developing, constructing and managing a renewable energy generation plant and related/associated activities for a period of 25 (TWENTY-FIVE) years at a market related rental determined by a Valuer, **be approved**;
2. that the abovementioned approval be subject to:
 - (a) Council approving a deviation from paragraph 18 of the Administration of Immovable Property Policy of 2015;
 - (b) a public participation process being followed; and
 - (c) if any objections to the lease are received, the matter be referred back to the Executive Mayor for consideration;
3. that the rental mentioned in 1 above be paid once the plant is operational, but limited to 5 years from date of commencement of the lease agreement, the latter to escalate annually on 1 July by a percentage equal to the prevailing CPI; and

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4. that Neon Blue (Pty) Ltd be responsible for all cost involved in the lease agreement and specifically the further applications and licencing costs as well as the cost of the notarial registration of the lease agreement against the Title Deed.

RECOMMENDATION TO THE COUNCIL:

that the deviation from paragraph 18 of the Administration of Immovable Property Policy in order to enter into a lease agreement with Neon Blue (Pty) Ltd without following a competitive bidding process, **be approved.**

RESPONSIBLE OFFICIAL :	M ERASMUS
TARGET DATE FOR IMPLEMENTATION :	26 NOVEMBER 2021
TARGET DATE TO INFORM APPLICANT :	26 NOVEMBER 2021
TARGET DATE TO INFORM OBJECTOR :	N/A

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7/2/3/1

R Marinus

Acting Manager: Property Administration

12 August 2021

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THIS MATTER SERVED BEFORE THE JOINT PORTFOLIO COMMITTEE ON 19 OCTOBER 2021, WHICH COMMITTEE RECOMMENDED AS FOLLOWS:

RECOMMENDATION:

that the item **be referred back.**

RESPONSIBLE OFFICIAL :

M ERASMUS

TARGET DATE FOR IMPLEMENTATION :

26 NOVEMBER 2021

TARGET DATE TO INFORM APPLICANT :

26 NOVEMBER 2021

TARGET DATE TO INFORM OBJECTOR :

N/A

ANNEXURE A



A portion of portion 1 of Farm No. 562