

11.

**ERF 8643 KLEINMOND - KLEINMOND COMMUNITY INVESTMENT HOLDINGS (PTY) LTD (KCIH): TRANSFER OF PROPERTY TO THE MUNICIPALITY AND WRITE OFF OF AMOUNTS RAISED**

7/2/3/2

A Le Roux

Manager: Property Administration

12 June 2020

(028) 316-3724

**1. Executive Summary**

The purpose of the report is to request Council to approve the writing off of the amount of R77,616.57 (SEVENTY SEVEN THOUSAND SIX HUNDRED AND SIXTEEN RAND AND FIFTY SEVEN CENTS), representing the municipal rates and taxes, services charges, interest, penalties and collection costs levied on the municipal account in relation to Erf 8643 Kleinmond (herein referred to as "the property"), which property will be transferred back to the municipality now that the legal process of enforcement of the reversionary clause in the deed of sale through an order of court was concluded.

Erf 8643 Kleinmond is situated on the corner of Luckhoff Street and Harbour Road, Kleinmond and is 1344m<sup>2</sup> in extent.

See locality map attached hereto marked Annexure A.

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

Directorate Finance  
Department Revenue

**3. Compliance with Strategic Priorities**

Provision of democratic, accountable and ethical governance  
Provision and maintenance of municipal services

**4. Delegated Authority**

None

**5. Legal Requirements**

- Local Government: Municipal Systems Act (Act 32 of 2000)
- Local Government: Municipal Finance Management Act (Act 56 of 2003) ("MFMA")
- Customer Care, Credit Control & Debt Collection Policy of the Overstrand Municipality as amended from time to time

## 6. Background/Discussion/Evaluation/Conclusion

### Background

The background with reference to KCIH can be summarised as follows. The fishing community of Kleinmond had a restitution claim regarding facilities and housing at the Kleinmond Harbour which had to be addressed during the Kleinmond Harbour development.

The claim was settled by means of the sale of the property for R1 to KCIH, which sale was duly approved by Council, and this transaction settled the restitution issue. The property was duly registered in the name of KCIH on 14 July 2014 from which date they were liable for the payment of rates, taxes and services charges. The purpose was for KCIH to develop the property to the benefit of the affected community. There was however a condition included in the title deed stipulating as follows:

*“13.6 Should the PURCHASER not complete the construction of the proposed building on the property and obtain an occupation certificate within a period of 2 (TWO) years from date of the registration of transfer of the property, ownership of the property shall revert back to the SELLER, and the PURCHASER, or its successors in title shall:*

*13.6.1 be compelled to sign the transfer documents within 7 days within receiving a notice to that effect, failing which the duly authorised agent of the SELLER is hereby appointed by the PURCHASER to sign such documentation, and*

*13.6.2 be responsible for all transfer costs and statutory duties payable in connection with the retransfer of the property to the SELLER and/or any third party with regards to the purchase or retransfer of the property, and*

*13.6.3 be entitled to a refund of the total purchase price mentioned in paragraph 2 hereof free of interest on the date of registration of transfer less any damages or loss incurred by the SELLER,*

*which time period of 2 (TWO) years may on written application of the PURCHASER to the SELLER stating the reasons for the request, be extended by consent of the SELLER given under the hand of the Municipal Manager, which consent will not be withheld unreasonably,*

*13.7 Should the PURCHASER or its successor in title intent to alienate or dispose of the Property at any time after transfer has been processed, the PURCHASER shall in writing first offer the Property to the SELLER and the SELLER shall have a pre-emptive right to purchase the Property at the same price as mentioned in paragraph 2.1 above. Such offer shall be valid for 3 (THREE) months of receipt and should the SELLER resolve to exercise its pre-emptive right, the owner shall transfer the Property without delay and all costs related to the transfer shall be borne by the owner.”*

KCIH were however unable to make progress in regard to the development of the property and the rates, taxes and services charges for this property also fell in arrears, and the KCIH “company” had subsequently been deregistered and as such ceased to function.

Deregistration can have dire consequences for the entity itself as well as for the creditors. The entity is deprived of its legal existence and can therefore no longer trade in the name of the organisation and no longer has the capacity to enter into binding transactions.

On 25 March 2019 we received confirmation from the Municipal Manager that a unanimous decision was taken following a meeting at Kleinmond that ownership should fall back to the Municipality in terms of the condition contained in the title in order to see to it that the property is used and developed for the benefit of the affected community.

Following this confirmation legal services provided the necessary legal opinion on the way forward to deal firstly with the re-registration of the holding company, and secondly the enforcement of the reversionary clause in the deed of sale and title deed through an order of court.

It was agreed with legal counsel that two separate processes were necessary in this matter. The first being that the Municipality had to apply to obtain reconstitution of KCIH, to revert the property back to the Municipality and render enforceable again, its contractual reversionary right, and secondly a court process through an application to obtain the reversion of the property, based on the deed of sale.

Due legal process was subsequently followed, after which the property was awarded to the Municipality in terms of a Court Order granted by the High Court of South Africa (Western Cape Division, Cape Town) at Cape Town on 6 November 2019 in the matter between Overstrand Municipality as Applicant and Kleinmond Community Investment Holding Proprietary Limited as First Respondent under Case Number 11248/2019.

The costs of transfer of the property to the Municipality will be for the account of the Municipality as KCIH will not be able to pay the transfer cost, which then will delay any transfer and enforcement of the Court Order. The costs of transfer amounts to R9,009.00, which amount is budgeted for.

The municipal account inclusive of all handed over accounts for erf 8643 currently amounts to R77,616.57, consisting of municipal services charges, interest, penalties and collection costs levied. This amount will have to be written off in order to issue the clearance certificate for the transfer of said property into the Municipality’s name again.

**7. Financial Implications**

The amount of R77,616.57 (SEVENTY SEVEN THOUSAND SIX HUNDRED AND SIXTEEN RAND AND FIFTY SEVEN CENTS), consisting of municipal services charges, interest, penalties and collection costs up to 30 June 2020 will be written off.

The transfer costs in the amount of R9,009.00 (NINE THOUSAND AND NINE RAND) will be paid by the Municipality, for which amount there is budgeted for.

**8. Staff Implications**

N/A

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

None

**10. Annexures**

Annexure A: Locality map

**RECOMMENDATION TO THE COUNCIL:**

that Council **approves** the writing off of the amount of R77 616.57 (SEVENTY SEVEN THOUSAND SIX HUNDRED AND SIXTEEN RAND AND FIFTY SEVEN CENTS), representing the municipal rates and taxes, services charges, interest, penalties and collection costs levied on the municipal account number 311864300011 in order for the Municipality to attend to the transfer of Erf 8643 Kleinmond as ordered by the Court.

**RESPONSIBLE OFFICIAL :****A LE ROUX  
E HOONENBERG****TARGET DATE FOR IMPLEMENTATION :****30 JUNE 2020****TARGET DATE TO INFORM APPLICANT :****N/A**

