

14.

A PORTION OF ERF 1071 DE KELDERS: DEVIATION FROM THE APPROVED TARIFF AND ADMINISTRATION OF IMMOVABLE PROPERTY POLICY: UMZALI CIVILS (PTY) LTD**A Le Roux
23 January 2025****Divisional Manager: Property Management
(028) 316 5623****1. Executive Summary**

To obtain approval for:

- (a) the deviation from the approved tariff for the temporary use (≤ 12 months) of municipal land for the storage of building materials next to building sites or for general purposes (per m² per month);
- (b) the use of tariff S34C3: Enclosure or exclusive use of portions of the Commonage, Public Open Spaces, Road Reserves or Public Thoroughfares for gardening purposes where a lease is not applicable (per m² per month); and
- (c) the deviation from paragraph 41 of the Administration of Immovable Property Policy insofar the payment of rates, taxes, availability fees;

in order for the Municipality to enter into a 6 (SIX) months lease agreement with Umzali Civils (Pty) Ltd (hereinafter referred to as "Umzali") for the lease of municipal property, being a portion of Erf 1071 De Kelders ($\pm 3,200\text{m}^2$ in extent) (hereinafter referred to as the "property"), to be used for stockpiling of road construction material.

2. Service Delivery and Budget Implementation Plan - IGNITE

Directorate: Planning & Development
Property Management

3. Compliance with Strategic Priorities

Provision of democratic, accountable and ethical governance
Creation and maintenance of a safe and healthy environment

4. Delegated Authority

None

5. Legal Requirements

- Administration of Immovable Property Policy of the Overstrand Municipality (2015).
- Local Government: Municipal Finance Management Act, 2003 Municipal Asset Transfer Regulations, 2008 (No R. 878 of 2008).

6. Background/Discussion/Evaluation/Conclusion

Background/Discussion

Umzali was awarded the tender by the Western Cape Government (Department of Transport and Public Works) for the second phase of the upgrade of the R43 provincial road between Gansbaai and Hermanus. The first phase [between Hermanus and Stanford] was completed by Haw and Ingles. The latter negotiated stockpile space with private owners adjacent to the road for phase one. The new contractor, Umzali tried to negotiate with private landowners for the second phase but was not able to obtain a suitable area close to Gansbaai. They subsequently enquired whether Overstrand Municipality in its capacity as owners of the property, would be prepared to make a portion of approximately 3,200m² (THREE THOUSAND TWO HUNDRED SQUARE METRES) in extent, as indicated on the attached locality map marked Annexure A, available to be used for stockpiling of road construction material.

Council at an ordinary council meeting held on 27 September 2023 approved the lease application for a period of 12 (TWELVE) months with the monthly rental of R2.46/m² (TWO RAND AND FORTY SIX CENTS PER SQUARE METRE) (VAT excluded) (tariff S34C3) which calculates to an amount of R7,872.00 (SEVEN THOUSAND EIGHT HUNDRED AND SEVENTY TWO RAND) (VAT excluded) per month, the agreement commenced on 1 October 2023 and expired on 30 September 2024.

The upgrading of the road has not been completed within the previous lease period and due to the works, that need to be completed as per Umzali's tender with Western Cape Government (Department of Transport and Public Works), Umzali submitted a new application to lease the property for another 6 (Six) months from 1 October 2024 until 31 March 2025. As Umzali did not request that the agreement be renewed before expiry thereof, the process had to be started anew with a new lease agreement.

There is at this stage not enough time to obtain a valuation at their cost (R2,500.00), hence it is recommended that Council deviates from the approved tariff S34G1 and rather apply the tariff S34C3 (even though the latter is not explicitly applicable to leases) to make it more affordable for Umzali. The mentioned tariff is:

Tariff code	Detail	Exclude VAT	Include VAT
S34C3	Enclosure or exclusive use of portions of the Commonage, Public Open Spaces, Road Reserves or Public Thoroughfares for gardening purposes where a lease is not applicable (per m ² per month)	2.61	3.00

If the above tariff is used, Umzali will pay a monthly rental of approximately R8,352.00 (EIGHT THOUSAND THREE HUNDRED AND FIFTY-TWO RAND) (VAT excluded) per month which is more affordable for them.

Evaluation

The following conditions of the Administration of Immovable Property Policy of the Overstrand Municipality of 2015 are applicable:

- (1) **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.”**

Umzali paid the required application fee of R775.00 (SEVEN HUNDRED AND SEVENTY-FIVE RAND) (VAT included).

Paragraph 21: “Short term lease of municipal immovable property:

21.1 The Municipality may grant a short term lease of municipal immovable property up to three years without the option of renewal only after the Accounting Officer has approved the lease in principle.

21.2 Immovable property let according to paragraph 21.1 above need not be advertised in terms of paragraph 10.1 and 10.2 and need not be subsequently approved by the Executive Mayor, but shall be subject to the following:

- (a) the lessee shall be responsible for all costs regarding the connection of services, service fees and any other costs associated with the lease;**
- (b) the Municipality shall, if it is not prescribed that market related rental must be charged, determine the rental;**
- (c) the lessee shall undertake in writing to compensate the Municipality for damages caused to the immovable property for whatever reason;**
- (d) the lessee shall indemnify the Municipality against any claims; and**
- (e) the Municipality may request proof of financial viability to honour the lease.”**

The proposed lease period is for 6 (SIX) months and was approved on 12 November 2024 by the Municipal Manager (Accounting Officer), subject to Council's approval for deviation from the approved tariff S34G1, and approving that tariff S34C3 be used in calculation of the monthly rental and further approving deviation from paragraph 41 of the Administration of Immovable Property Policy insofar the payment of rates, taxes, availability fees and services charges be waived.

No services will be provided to the property. A lease agreement has been entered into with Umzali (for administrative purposes) which addresses all and any comments received from the internal departments. This lease agreement also contains the required indemnity and all other relevant conditions.

- (2) 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 request is that Tariff S34C3 be used instead of Tariff S34G1.

- (2) Paragraph 41: "The lessee shall, as a rule, be liable for the payment of rates, taxes and service charges in respect of the leased property. In the case of leases to certain social care users and sports facilities at rentals lower than market value the Municipality may consider granting a rebate on rates in accordance with the Rates Policy of the Municipality."**

As only a portion of Erf 1071 De Kelders will be made available, it will be difficult to calculate rates and taxes. Umzali is only going to use the property for stockpiling and has indicated that they will not need any services to the property. It will thus be requested that no rates, taxes and service charges be levied.

Conclusion

It is proposed that Council approves:

- (a) the deviation from the approved tariffs to rather use tariff Tariff S34C3: Enclosure or exclusive use of portions of the Commonage, Public Open Spaces, Road Reserves or Public Thoroughfares for gardening purposes where a lease is not applicable (per m² per month) instead of Tariff S34G1: Temporary use (≤12months) of municipal land for the storage of building materials next to building sites or for general purposes (per m² per month) in calculating the rental payable by Umzali; and
- (b) the deviation from paragraph 41 of the Administration of Immovable Property Policy insofar the payment of rates, taxes, availability fees and services charges.

7. Financial Implications

The Municipality stands to gain a rental amount of R8,352.00 (EIGHT THOUSAND THREE HUNDRED AND FIFTY TWO RAND) (VAT excluded) per month calculated at R2.61/m² on an estimated size of 3,200m² instead of R22,272.00 (TWENTY TWO THOUSAND TWO HUNDRED AND SEVENTY TWO RAND) (VAT excluded) per month calculated at R6.96/m² on an estimated size of 3,200m².

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

None

10. Annexures

Annexure A: Locality Map

RECOMMENDATION TO THE COUNCIL:

1. (a) that the deviation from the approved tariff S34G1 for the temporary use (≤ 12 months) of municipal land for the storage of building materials next to building sites or for general purposes (per m² per month), be approved;
- (b) that the tariff S34C3: Enclosure or exclusive use of portions of the Commonage, Public Open Spaces, Road Reserves or Public Thoroughfares for gardening purposes (where a lease is not applicable) (per m² per month) be used in calculation of the rental, **be approved**; and
- (c) that the deviation from paragraph 41 of the Administration of Immovable Property Policy insofar the payment of rates, taxes, availability fees and services charges, **be approved**; and
2. that the Property be rehabilitated to the satisfactory of the Environmental department when the lease agreement expires.

RESPONSIBLE OFFICIAL :

R OCTOBER

TARGET DATE FOR IMPLEMENTATION :

9 APRIL 2025

TARGET DATE TO INFORM APPLICANT :

9 APRIL 2025

ANNEXURE A

