G20/08/19  APPLICATION FOR A LEASE AGREEMENT FOR A PORTION OF ERF 2252, (HORNLEE) KNYSNA

REPORT FROM MUNICIPAL MANAGER

PURPOSE OF THE REPORT

To request the Municipal Council to consider approving the application for a lease agreement for a portion of Erf 2252, (Hornlee) Knysna in terms of the Asset Transfer Regulations, 2008 and our Management of Immovable Property Policy.

BACKGROUND

We have received an application from Mr. Julian Williams, the owner of 702 Harker Street (Hornlee), Knysna, who has applied to lease a portion of Erf 2252, Knysna from the Municipality (See Annexure A). The applicant wants to make use of the property in question for purpose of a nursery.

DISCUSSION

Section 34 of the Asset Transfer Regulations 2008, deals with Granting of rights to use, control or manage municipal capital assets and reads as follows:

“Granting of rights to use, control or manage municipal capital assets

34. (1) A municipality may grant a right to use, control or manage a capital asset only after –

(a) the accounting officer has in terms of regulation 35 conducted a public participation process regarding the proposed granting of the right; and

(b) The municipal council has approved in principle that the right may be granted.

(2) Subregulation (1) (a) must be complied with only if –

(a) the capital asset in respect of which the proposed right is to be granted has a value in excess of R10 million; and

(b) a long term right is proposed to be granted in respect of the capital asset.

(3) (a) Only the Municipal council may authorise the public participation process referred to in subregulation (1)(a).

(b) A request to the municipal council for authorisation of a public participation process must be accompanied by an information statement stating –

(i) the reason for the proposal to grant a long term right to use, control or manage the relevant capital asset;

(ii) any expected benefits to the municipality that may result from the granting of the right;

(iii) any expected proceeds to be received by the municipality from the granting of the right; and

(iv) any expected gain or loss that will be realised or incurred by the municipality arising from the granting of the right.”
Erf 2252, Knysna is valued at R 900 000.00 in terms of the Knysna Local Municipality Valuation roll for the period 1 July 2017 – 30 June 2022. The area identified is thus not valued more than R10 million. The Asset Transfer Regulations describes “a long term” as “a period of longer than three years”. A public participation process regarding the proposed granting of the right is not required. It is however proposed that the Municipal Council’s intention to lease a portion of Erf 2252, Knysna to Mr. Julian Williams for a period of 9 years with the option to renew the lease for a further period of 5 years be advertised for public comments and or objections.

“Consideration of proposals to grant rights to use, control or manage municipal capital assets 36. The municipal council must, when considering in terms of regulation 34(1)(b) approval for any proposed granting of a right to use, control or manage a capital asset, take into account –
(a) whether the capital asset may be required for the municipality’s own use during the period for which the rights is to be granted;
(b) the extent to which any compensation to be received for the right together with the estimated value of any improvements or enhancements to the capital asset that the private sector party or organ of state to whom the right is granted will be required to make, will result in a significant economic or financial benefit to the municipality;
(c) the risks and rewards associated with the use, control or management of the capital asset in relation to the municipality’s interests;
(d) any comments or representations on the proposed granting of the right received from the local community and other interested persons;
(e) any written views and recommendations on the proposed granting of the right by the National Treasury and the relevant provincial treasury;
(f) the interests of any affected organ of state, the municipality’s own strategic, legal and economic interests and the interests of the local community; and
(g) compliance with legislative regime applicable to the proposed granting of the right.”

As mentioned in the application, the property in question is currently being used by the applicant after he decided to make use of the property about 4 years ago.

A monthly rental, to be determined by the Municipal Valuer, DDP Valuers, will be received by the Municipality for the leasing of the property in question. The applicant intends to create a nursery.

Any comments or representations from the local community and other interested persons shall be gathered during the advertising process.

The written views and recommendations should be requested from National Treasury and the relevant provincial treasury during the advertising process.

No organ of state to be affected, nor the municipality’s own strategic, legal and economic interests or the local community.

The application is tabled before the Municipal Council for an in principle approval that the right be granted and that all relevant legislation be complied with.

FINANCIAL IMPlications

There will be no negative financial impact on Knysna Municipality as the applicant will be liable for establishing a nursery on a portion of Erf 2252, Knysna. All other incidental costs will be for the account of the applicant. The Municipal Valuer, DDP Valuers, should be appointed to determine a market related rental.
RELEVANT LEGISLATION

Local Government: Municipal Finance Management Act, 2003
Asset Transfer Regulations 2008
Knysna Municipality’s Management of Immovable Property Policy

RECOMMENDATION OF THE MUNICIPAL MANAGER

[a] That the report and annexure regarding the request for a lease agreement on a portion of Erf 2252, (Hornlee) Knysna by the applicant, be noted;

[b] That in terms of Section 14(2)(b) of the Local Government: Municipal Finance Management Act, 2003, the Municipal Manager be instructed to appoint the Municipal Valuer, DDP Valuers to determine the fair market rental value of a portion of Erf 2252, (Hornlee) Knysna;

[c] That the Municipal Manager be instructed to advertise the intended leasing of a portion of Erf 2252, (Hornlee) Knysna as a nursery, and

[d] That comments be obtained from the Planning and Development, Technical and Community Services Directorates; and

[e] That a further report be submitted to a following Governance and Economic Development Committee meeting after the advertising as mentioned in [c] above have been completed, which report must include comments from the Technical Services, Finance, Community Services and Planning and Development Directorates.

APPENDIX / ADDENDUM

ANNEXURE A - Application letter from Mr. Julian Williams.

File Number : 7/2/2/1
Execution : Municipal Manager
Director : Corporate Services
Manager : Legal Services
ANNEXURE A

Colab No.;

File No.: 72121

Mnr. Julian Williams
702 Harker Str
Hornlee
Knysna

Die Munisipale Bestuurder

Hiermee wile k graag aansoek doen vir die Grond oor kant my klein gedeelte van ERF No 2252.

Waarvoor ek dit wil huur koop soos ingekleur op kaart.

Ek het so vyf en dertig jaar terug my woning kontant van die raad gekoop van ons.

Gemeenskap het dit misbruik en n stortings terin daarvan gemaak. So drie jaar het ek dit begin skoonmaak bone en plante daar op geplant. So hou ek dit tot van dag toe instand as n natuur lief hever sou ek graag wil voort bou om ons groen erfenis in die Hornlee gebied voort te sit en terselfde tyd alle besoekers in die gebied te verwelkom net n groen en blomtreike gesig.

My rede vir die aansoek is om n Klein Nursery te begin te bedryf sook ons gemeenskap aan te spoor om ons groen erfenis te waardeer.

Met die verandering van ons klimaat in die toekoms ek hoop dat u my versoek ernstig sal oorweeg en goedkeur.

Byvoorbeeld Dank

J. Williams

[Signature]
REPORT FROM THE MUNICIPAL MANAGER

PURPOSE OF THE REPORT

To request the Municipal Council to consider the application to lease Erf 2461, Marigold Street, Sedgefield in terms of the Asset Transfer Regulations, 2008 for the cultivation of food and medicinal crops.

background

The applicant, Anika Hari together with Waldo Shafli and Juan Marais have applied to lease Erf 2461, Sedgefield to start cultivation of food and medicinal crops on the said Erf (see Annexure A).

DISCUSSION

Section 34 of the Asset Transfer Regulations 2008, deals with Granting of rights to use, control or manage municipal capital assets and reads as follows:

“Granting of rights to use, control or manage municipal capital assets

34. (1) A municipality may grant a right to use, control or manage a capital asset only after –

(a) the accounting officer has in terms of regulation 35 conducted a public participation process regarding the proposed granting of the right; and

(b) The municipal council has approved in principle that the right may be granted.

(2) Subregulation (1) (a) must be complied with only if –

(a) the capital asset in respect of which the proposed right is to be granted has a value in excess of R10 million; and

(b) a long term right is proposed to be granted in respect of the capital asset.

(3) (a) Only the Municipal council may authorise the public participation process referred to in subregulation (1)(a).

(b) A request to the municipal council for authorisation of a public participation process must be accompanied by an information statement stating –

(i) the reason for the proposal to grant a long term right to use, control or manage the relevant capital asset;

(ii) any expected benefits to the municipality that may result from the granting of the right;

(iii) any expected proceeds to be received by the municipality from the granting of the right; and

(iv) any expected gain or loss that will be realised or incurred by the municipality arising from the granting of the right.”
Erf 2461 is valued at R20 000.00 in terms of the Knysna Local Municipality Valuation roll for the period 1 July 2017 – 30 June 2022. The area identified is thus not valued more than R10 million. The Asset Transfer Regulations describes “a long term” as “a period of longer than three years”. The applicant did not state for how long they intend to lease the Erf. A public participation process regarding the proposed granting of the right is not required. It is however proposed that the Municipal Council’s intention to lease Erf 2461, Sedgefield to the applicants for a period of 9 years and 11 months be advertised for public comments and or objections.

Section 36 of the Asset Transfer Regulations 2008 deals with the consideration of proposals to grant rights to use, control or manage municipal capital assets and reads as follows:

“The municipal council must, when considering in terms of regulation 34 (1) (b) approval for any proposed granting of a right to use, control or manage a capital asset, take into account:

(a) whether the capital asset may be required for the municipality’s own use during the period for which the right is to be granted;
(b) the extent to which any compensation to be received for the right together with the estimated value of any improvements or enhancements to the capital asset that the private sector party or organ of state to whom the right is granted will be required to make, will result in a significant economic or financial benefit to the municipality;
(c) the risks and rewards associated with the use, control or management of the capital asset in relation to the municipality’s interests;
(d) any comments or representations on the proposed granting of the right received from the local community and other interested persons;
(e) any written views and recommendations on the proposed granting of the right by National Treasury and the relevant provincial treasury;
(f) the interests of any affected organ of state, the municipality’s own strategic, legal and economic interests and the interests of the local community; and
(g) compliance with the legislative regime applicable to the proposed granting of the right.”

It is not anticipated that Erf 2461, Sedgefield will be required for the municipality’s own use during the period for which the right is to be granted. The property in question is vacant and has been unutilised by the Municipality for a considerable period of time. The subject property is situated in Marigold Street, Sedgefield (See Annexure B).

A monthly rental, to be determined by the Municipal Valuer, DDP Valuers, will be received by the Municipality for the leasing of the property in question.

Any comments or representations from the local community and other interested persons shall be gathered during the advertising process.

The written views and recommendations should be requested from National Treasury and the relevant provincial treasury during the advertising process.

No organ of state to be affected, nor the municipality’s own strategic, legal and economic interests or the local community.

The application is tabled before the Municipal Council for an in principle approval that the right be granted and that all relevant legislation be complied with.
It must be noted that Erf 2461, Sedgefield is not registered in the name of Knysna Municipality. The Erf is still registered in the name of LANDJONG BELEGGINGS PTY LTD under Title Deed T13832/1990 (See Annexure C). Erf 2461, Sedgefield is an open space. Erf 2461, Sedgefield, vests in the name of the Local Authority, Knysna Municipality and should be transferred into the name of Knysna Municipality.

FINANCIAL IMPLICATIONS

There would be no negative financial impact on Knysna Municipality as the applicant will be liable for all the related costs.

RELEVANT LEGISLATION

Local Government: Municipal Finance Management Act, 2003
Asset Transfer Regulations 2008

RECOMMENDATION OF THE MUNICIPAL MANAGER

[a] That the report and annexure regarding the request for permission to start cultivation of food and medicinal crops on Erf 2461, Marigold Street, Sedgefield by the applicant, be noted;

[b] That the Municipal Manager be instructed to attend to the transferring of the property into the name of Knysna Municipality;

[c] That in terms of Section 14(2)(b) of the Local Government: Municipal Finance Management Act, 2003, the Municipal Manager be instructed to appoint the Municipal Valuer, DDP Valuers to determine the fair market rental value of Erf 2461, Marigold Street, Sedgefield;

[d] That the Municipal Manager be instructed to advertise the intended leasing of Erf 2461, Marigold Street, Sedgefield;

[e] That comments from the Planning and Development, Technical Services and Community Services Directorates be obtained; and

[f] That a further report be submitted to a following Governance and Economic Development Committee meeting after the advertising as mentioned in [c] above have been completed, which report must also include comments from the Technical Services, Finance, Community Services and Planning and Development Directorates.

APPENDIX / ADDENDUM

ANNEXURE A – Application for permission to start cultivation of food and medicinal crops on Erf 2461
ANNEXURE B – GIS Diagram of Erf 2461, Sedgefield
ANNEXURE C – Deed Search of Erf 2461, Sedgefield

File Number: 7/2/1/2
Execution: Municipal Manager
Director: Corporate Services
Manager: Legal Services
Good Day Mr. Adonis

I am so glad you share my vision of how important it is to start growing our own food again!

I am writing as a part of a group of residents who live in and around Sedgefield. We would like to gain permission to start cultivation of food & medicinal crops on a piece of vacant land which is owned by the Municipality.

I have already made my neighbours aware of my intention, and there are no objections.

The Plot is Erf 2461 which comprises of 1890m², and is next to where I live.

The reasons for cultivation can be stated as follows:

- To gain an understanding of the climate & growing conditions of Sedgefield to further the knowledge of residents as to what to plant when
- To be a showcase for the surrounding community as to what is possible to grow in a small area as well as how to go about it
- To bolster the food & health security of the surrounding community
- To turn a barren plot into an attractive plot

Thank you for your time and consideration

Sincerely
Anika Hari together with Waldo Shaffil and Juan Marais

Tel: 074 191 0434
Email: info@glutenfreegirl.co.za
**WinDeed Database Deeds Office Property**

**SEDFIELD, 2461, 0 (CAPE TOWN)**

### General Information
- **Date Requested:** 2019/06/20 11:52
- **Deeds Office:** CAPE TOWN
- **Information Source:** WINDEED DATABASE
- **Reference:** -

### Property Information
- **Property Type:** ERF
- **Erf Number:** 2461
- **Portion Number:** 0
- **Township:** SEDGFIELD
- **Local Authority:** SEDGFIELD MUN
- **Registration Division:** KNYSNA RD
- **Province:** WESTERN CAPE
- **Diagram Deed:** 8291000/800
- **Extent:** 1891.0000SOM
- **Previous Description:** PTN OF 2457-GP12667
- **LPI Code:** C0390010000024610000

### Owner Information
- **Owner 1 of 1**
  - **Type:** COMPANY
  - **Name:** LANDJONG BELEGINGS PTY LTD
  - **ID / Reg. Number:** 70035676/07
  - **Title Deed:** T13832/1990
  - **Registration Date:** 1990/03/09
  - **Purchase Price (R):** UNKNOWN
  - **Purchase Date:** 1990/03/09
  - **Share:** 0.00
  - **Microfilm:** 1990 0431 0694
  - **Multiple Properties:** NO
  - **Multiple Owners:** NO

### Endorsements (1)
- **# Document**  | **Institution**  | **Amount (R)**  | **Microfilm**
- 1 PUBLIC PLACE | - | UNKNOWN | 00000000

### Historic Documents
- No documents to display

**Disclaimer**
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REPORT FROM DIRECTOR : CORPORATE SERVICES

PURPOSE OF THE REPORT

To request the Municipal Council to consider disposing of a portion of Erf 214 (White Location), Knysna in terms of the Asset Transfer Regulations, 2008 and our Management of Immovable Property Policy.

BACKGROUND

Mr. Thami Johnson Duna wishes to purchase a portion of Erf 214, Knysna (See Annexure A). Mr. Duna wants to start a Tshisa Nyama on the corner of Mlungisi and Sisulu Street in White Location. On the 11th of February 2015 Mr. Duna, through his attorney of record, Logan Martin Inc Attorneys, applied to purchase/lease the portion in question as he was already using the portion in question for his container (See Annexure B).

Mr. Duna already started to build a building on the said property and was stopped by our Building Department. The building is already above window level high (See Annexure C).

DISCUSSION

The applicant applied to purchase a portion of Erf 214, Knysna.

Section 14 of the Local Government: Municipal Finance Management Act, 2003 (Act 56 of 2003) deals with disposal of capital assets of municipalities and reads as follows:

“14. Disposal of capital assets:

(1) A municipality may not transfer ownership as a result of a sale or other transaction or otherwise permanently dispose of a capital asset needed to provide the minimum level of basic municipal services.

(2) A municipality may transfer or otherwise dispose of a capital asset other than one contemplated in subsection (1), but only after the municipal council, in a meeting open to the public –

(a) has decided on reasonable grounds that the asset is not needed to provide the minimum level of basic municipal services; and

(b) has considered the fair market value of the asset and the economic and community value to be received in exchange for the asset.

(3) A decision by a municipal council that a specific capital asset is not needed to provide the minimum level of basic municipal services, may not be reversed by the municipality after that asset has been sold, transferred or otherwise disposed of.
(4) A municipal council may delegate to the accounting officer of the municipality its power to make the determinations referred to in subsection 2(a) and (b) in respect of movable capital assets below a value determined by the council.

(5) Any transfer of ownership of a capital asset in terms of subsection (2) or (4) must be fair, equitable, transparent, competitive and consistent with the supply chain management policy which the municipality must have and maintain in terms of section 111…"

The subject portion a portion of Erf 214, Knysna is not required to provide the minimum level of basic municipal services as this portion has been used by the applicant for a number of years. If the Municipal Council give the required in principle decision to alienate a portion of Erf 214, Knysna the Municipal Valuer, DDP Valuers, should be requested to provide the market value for a portion of Erf 214, Knysna. The alienation of a portion of Erf 214, Knysna must be fair, equitable, transparent, competitive and consistent with the supply chain management policy of the Municipality as required by the Local Government: Municipal Finance Management Act, 2003 (Act 56 of 2003).

The Knysna Municipality Supply Chain management Policy 2018/19 approved by the Municipal Council on 6 June 2018 states the following with regards to “Disposal Management”:

“40. Disposal management

(1) The criteria for the disposal or letting of assets, including unserviceable, redundant or obsolete assets will be subject to Sections 14 of the Act, and asset transfer regulations;

(2) Assets may be disposed of by –
   (i) transferring the asset to another organ of state in terms of a provision of the Act enabling the transfer of assets;
   (ii) transferring the asset to another organ of state at market related value or, when appropriate, free of charge;
   (iii) selling the asset; or
   (iv) destroying the asset

(3) The Accounting Officer must ensure that –
   (a) immovable property is sold only at market related prices except when the public interest or the plight of the poor demands otherwise;
   (b) movable assets are sold either by way of written price quotations, a competitive bidding process, auction or at market related prices, whichever is the most advantageous;
   (c) firearms are not sold or donated to any person or institution within or outside the Republic unless approved by the National Conventional Arms Control Committee;
   (d) immovable property is let at market related rates except when the public interest or the plight of the poor demands otherwise;
   (e) all fees, charges, rates, tariffs, scales of fees or other charges relating to the letting of immovable property are reviewed annually;
   (f) where assets are traded in for other assets, the highest possible trade-in price is negotiated; and
   (g) in the case of the free disposal of computer equipment, the provincial department of education is first approached to indicate within 30 days whether any of the local schools are interested in the equipment.”

The market related price to be determined by the Municipal Valuer will be the price at which the property is to be sold. This would also be the most advantageous process in terms of 40.(3)(b) of the SCM Policy, that the accounting officer must ensure the property be sold at.
Section 5 of the Local Government: Municipal Finance Management Act, 2003 (Act 56 of 2003): Municipal Asset Transfer Regulations deals with the decision-making process for municipalities when alienating Municipal owned property:

“5. (1) A municipality may transfer or dispose of a non-exempted capital asset only after –

[a] the accounting officer has in terms of regulation 6 conducted a public participation process to facilitate the determinations a municipal council must make in terms of section 14(2)(a) and (b) of the Act; and

[b] the municipal council –

(i) has made the determinations required by section 14(2)(a) and (b); and

(ii) has a consequence of those determinations approved in principle that the capital asset may be transferred or disposed of.

(2) Subregulation (1)(a) must be complied with only if the capital asset proposed to be transferred or disposed of is a high value capital asset. If the combined value of any capital assets a municipality intends to transfer or dispose of in any financial year exceeds five per cent of the total value its assets, as determined from its latest available audited annual financial statements, subregulation (1)(a) must be complied with in relation to all the capital assets proposed to be transferred or disposed of during that year."

The Municipal Asset Transfer Regulations define “high value” as, “in relation to a capital asset of a municipality or municipal entity, means that the fair market value of the capital asset exceeds any of the following amounts:

(a) R50 million;

(b) One per cent of the total value of the capital assets of the municipality or municipal entity, as determined from the latest available audited annual financial statements of the municipality or entity; or

An amount determined by resolution of the council of the municipality or of the parent municipality of the municipal entity which is less than (a) or (b)."

The remainder of Erf 214, is valued at R 17 000 000.00 on the Valuation roll for 2017/2022. The portion in question, the remainder of Erf 214 is being used by the applicant for a number of years, first as a storage container and now for the building of his building as a Tshisanyama.

The total value of the capital assets of Knysna Municipality for the financial year ended on 30 June 2017 is determined to be R 1 055 974 293. One per cent of R 1 055 974 293 is R 10 559 742.93. The property in question, the remainder Erf 214, Knysna is valued more than R 10 559 742.93, however, the portion of the remainder of Erf 214, as applied for is not valued more than R 10 559 742.93, thus subregulation (1)(a) [public participation process] of the Asset Transfer Regulations does not need to be complied with.

However, taking into consideration the Management of Immovable Property Policy, the Knysna Municipality Supply Chain Management Policy, the Municipal Asset Transfer Regulations and the Local Government: Municipal Finance Management Act, 2003 (Act 56 of 2003), although all the relevant legislation states that the property in question does not need to follow a public participation process, as a public participation process would have no purpose. It is still recommended that the intention to alienate, a portion of Erf 214, Knysna to the applicant, Mr. Duna, should be advertised for comments and objections.
FINANCIAL IMPLICATIONS

This Municipal property must be alienated at a market related price as determined by the Municipal Valuer. There is no cost for the Municipality of this transaction as the applicant must be liable for all the costs relating to this transaction.

RELEVANT LEGISLATION

Local Government: Municipal Finance Management Act, 2003
Local Government: Municipal Finance Management Act (56/2003): Municipal Asset Transfer Regulations
Management of Immovable Property Policy
Knysna Municipality Supply Chain Management Policy

RECOMMENDATION OF THE MUNICIPAL MANAGER

[a] That the report and annexure’s regarding the application to purchase, a portion of Erf 214, (White Location) Knysna,
[b] be noted;
[c] That in terms of Section 14(2)(b) of the Local Government : Municipal Finance Management Act, 2003, the Municipal Manager be instructed to appoint the Municipal Valuer, DDP Valuers to determine the fair market value of a portion of Erf 214, (White Location) Knysna, as applied for;
[d] That the Municipal Manager be instructed to advertise the intended alienation of a portion of Erf 214, (White Location) Knysna, and
[e] That a further report be submitted to a following Governance and Economic Development Committee meeting after the advertising as mentioned in [c] above have been completed, which report must include comments from the Finance and Community Services Directorates.

APPENDIX / ADDENDUM

ANNEXURE A – Application letter from Mr. Thami Duna
ANNEXURE B – Application letter from Mr. Duna’s attorney
ANNEXURE C – Pictures of the building

File Number : 7/2/1/2
Execution : Municipal Manager
Director : Corporate Services
Manager : Legal Services
ANNEXURE A

45 Sibene Street
White Location
Kasama
6570
25 March 2019

Kasama Municipality
Queen Street
Kasama
6570

TO WHOM IT MAY CONCERN,

Dear Sir/Madam,

I hereby wish to apply for site which is situated on the corner of Mlungisi and Sibene Street, White Location. I did apply for this piece of ground long time ago. The container was also the purpose of storage of tools and equipments.

I have built a house for the intention of tourism in town and the building is at window level and above, hunting for the roof. My wish is to start before the Eastern and wishing to lease the ground.

I wish and await for your advice in this regard.

Yours faithfully

Thami Johnson

25/03/19
Dear Sir

RE: THAMI DUNA

We act for Thami Duna.

Our instructions are that our client resides at 45 Sisulu Street, White Location, from where he has for a number of years been conducting a vehicle repair business. Our further instructions are that our client's tools and equipment have been stored in a container on the open ground on the corner of Sisulu and Mlungisi Streets, which container he placed on the property approximately 5 years ago and which he has openly used for storage purposes since then. Attached is an aerial photograph showing the position of the container.

Our client, whose only income comes from his repair business, is desirous of moving his business to the piece of land on which the container is situate and therefore enquires as to whether the Municipality will conclude a lease with him in respect of the land on which the container is situated plus a reasonable area surrounding same. If possible our client would like the lease to include an option to purchase the portion in due course.

We await your advices herein.

Yours faithfully

LOGAN - MARTIN INC.

per: G LOGAN

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Directors:
Peter Martin BA LLB (Appraiser) • Gerald Logan & Jents LLB • Delon Bernard & Coon LLB
• Jacques de Villiers & Poc (Sp.Auctioneering) • Office Manager: Annetta Smit
ANNEXURE C
GOVERNANCE AND ECONOMIC DEVELOPMENT COMMITTEE MEETING
AGENDA
1 AUGUST 2019

6.23

G23/08/19 APPLICATION TO PURCHASE A PORTION OF ERVEN 5043 AND 214 (CONCORDIA), KNYSNA

REPORT FROM DIRECTOR : CORPORATE SERVICES

PURPOSE OF THE REPORT

To request the Municipal Council to consider disposing of a portion of erven 5043 and 214 (Concordia), Knysna of in terms of the Asset Transfer Regulations, 2008 and our Management of Immovable Property Policy.

BACKGROUND

The congregation, Amazing Grace Ministries have applied to purchase a portion of erven 5043 and 214 (Concordia), Knysna (See Annexure A). The congregation want to build a church building on the land in question. The congregation is currently made up of 150 members and are currently using people’s houses to have their Sunday services in.

The Municipal Council on 28 September 2017 resolved the following:

“FG29/08/17 APPLICATION FOR LEASE AGREEMENT – DIE LIG VAN GOD, NEKKIES: ERF 8126, KNYSNA (KHAYALETHU)

UNANIMOUSLY RESOLVED
(By the Finance, Governance and Economic Development Committee on 10 August 2017)

[a] That the item with regard to the application for lease agreement – Die Lig van God, Nekkies : Erf 8126, Knysna (Khayalethu), be withdrawn;

[b] That the Municipal Manager be requested to submit a comprehensive report to the Mayoral Committee regarding the provision and identification of erven for religious purposes in all former disadvantaged areas.

File number : 7/2/1/2/1
Execution : Municipal Manager
Director : Planning and Development Manager : Town Planning and Building Control”

The Planning and Development directorate, (Manager: Town Planning) will as part of the new SDF identify all Municipal owned properties suitable to be used as Church properties/religious purposes.

DISCUSSION

The congregation applied to purchase a portion of erven 5043 and 214 (Concordia), Knysna. The subject property was used as a TRA.
The application was submitted to our Integrated Human Settlements directorate for their inputs, due to the previous usage of the property for execution of their functions.

**COMMENTS DIRECTOR : INTEGRATED HUMAN SETTLEMENT**

Please note that the area indicated on the map in the application circulated by yourself extends two erven, to wit Remainder Erf 214 (Undetermined Zone) and Erf 5043 Knysna (Public Authority Zone). The erven are currently utilised as a housing office and a housing support centre as well as a temporary relocation area (TRA). Furthermore, the area has been earmarked for the future utilisation of the erven for economic development purposes. In the light thereof, the department does not support the application for the alienation of the property.

**RELEVANT LEGISLATION**

Local Government: Municipal Finance Management Act, 2003
Local Government: Municipal Finance Management Act (56/2003): Municipal Asset Transfer Regulations
Management of Immovable Property Policy
Knysna Municipality Supply Chain Management Policy

**RECOMMENDATION OF THE MUNICIPAL MANAGER**

[a] That the report and annexure’s regarding the application to purchase, a portion of Erf 5043 and a portion of Erf 214, (Concordia) Knysna, be noted; and

[b] That the application to purchase a portion of Erf 5043 and a portion of Erf 214, (Concordia) Knysna be rejected as the properties in question are required for the provision of municipal services.

**APPENDIX / ADDENDUM**

ANNEXURE A – Application letter from Amazing Grace Ministries.

File Number : 7/2/1/2
Execution : Municipal Manager
            Director : Corporate Services
            Manager : Legal Services
AMAZING GRACE MINISTRIES
(Ushering The Love of God into lives)

30 November 2018

Knysna Municipality
Clyde Street
Knysna
6570

Colab No.: 1
File No.: 74211

Attention: Renwill Hardnick

Dear Sir,

The above-mentioned Congregation would like to express the request and interest in buying the vacant land which is in Concordia at site no. 5043.

Our motive to buy this land is as follows:
We want to build a church building. And this building will accommodate numerous numbers of different kinds of people irrespective of what colour they are. We aim to build a non-racial church that will accommodate all kinds of people as we strongly believe that the word of God is the solution to the dying world. We already had more than 150 members of which we had to transport every Sunday to our small house that we use as a Church. We have also considered the fact that this building will not only be a Church but will also be useful to our community events etc. We have considered the parking and access area will be an advantage too.

Your immediate response towards our request will be highly appreciated.

Yours sincerely

[Signature]

MR T. NKEFA
Cell: [Number]
REPORT FROM MUNICIPAL MANAGER

PURPOSE OF THE REPORT

To request the Municipal Council to consider approving the lease agreement for a portion of Erf 3281, (Hornlee) Knysna in terms of the Asset Transfer Regulations, 2008 and our Management of Immovable Property Policy.

BACKGROUND

The Municipal Council on 29 November 2018 resolved the following:

“CMC19/10/18 HORNLEE REPLACEMENT CLINIC – ERF 3281, UNUSED TAXI RANK, HORNLEE

UNANIMOUSLY RESOLVED

[a] That the report on the Hornlee replacement Clinic, Erf 3281, unused Taxi Rank, Hornlee, be accepted; and

[b] That permission be granted to the Acting Municipal Manager to proceed with negotiation to lease Erf 3281, Knysna to the Western Cape Department of Health to use as a clinic, subject to [c] below; and

[c] That the draft lease agreement be submitted to the Finance and Governance Committee once negotiated by the Acting Municipal Manager.

File Number : 9/1/2/5
Execution : Acting Municipal Manager”

The Western Cape Department of Transport and Public Works have provided the Municipality with a draft lease agreement for approval by the Municipality (See Annexure A). The draft lease agreement is for a period of 99 years at a rental of R1.00 per month.

The Western Cape Department of Transport and Public Works is, in terms of the Constitution, is an organ of State. Section 239 Constitution of the Republic of South Africa, 1996, and read as follows:

“239. Organ of state

a) any department of state or administration in the national, provincial or local sphere of government; or

b) any other functionary or institution –
i. exercising power or performing a function in the terms of the Constitution or a provincial constitution
ii. exercising a public power or performing a public function in terms of any legislation,

DISCUSSION

Section 41 of the Asset Transfer Regulations 2008, deals with Granting of rights to use, control or manage municipal capital assets to organ of states and reads as follows:

“Granting of rights to use, control or manage municipal capital assets to be in accordance with disposal management system
41. (2) The disposal management system of a municipality or municipal entity does not apply to the granting of a right to use, control or manage a capital asset if –
(a) ....
(b) ....
(c) ....
(d) .... or
(e) the right to use, control or manage that capital asset is granted to another organ of state in any other circumstance not provided in paragraph (a) to (d) provided that the capital asset is determined by resolution of the council of the municipality or of the parent municipality of the municipal entity to be surplus to the requirements of the municipality or entity.
(3) The municipality or municipal entity may negotiate directly with the private sector party or organ of state to whom the right to use, control or manage a capital asset referred to in subregulation (2)(a), (b), (c), (d) or (e) is to be granted.
(4) Before granting the right to use, control or manage a capital asset, the municipality or municipal entity must be satisfied that the private sector or organ of state to whom the right is to be granted can demonstrate the ability to adequately maintain and safeguard the asset.

The portion in question, a portion of Erf 3281, (Hornlee) Knysna is the unused Hornlee Taxi Rank. This property is thus deemed to be surplus to the requirement of the municipality and that is why Community Services took this item to the Municipal Council on 29 November 2018. Since the Western Cape Department of Transport and Public Works, is an organ of state, it is allowed that the Municipality may negotiate directly with the Western Cape Department of Transport and Public Works for the granting of rights to use, control or manage a portion of Erf 3281, (Hornlee) Knysna.

The Western Cape Department of Transport and Public Works is known to be capable to adequately maintain and safeguard a portion of Erf 3281, (Hornlee) Knysna to be used as the replacement clinic for Hornlee.

“Consideration of proposals to grant rights to use, control or manage municipal capital assets
36. The municipal council must, when considering in terms of regulation 34(1)(b) approval for any proposed granting of a right to use, control or manage a capital asset, take into account –
(a) whether the capital asset may be required for the municipality’s own use during the period for which the rights is to be granted;
(b) the extent to which any compensation to be received for the right together with the estimated value of any improvements or enhancements to the capital asset that the private sector party or organ of state to whom the right is granted will be required to make, will result in a significant economic or financial benefit to the municipality;
(c) the risks and rewards associated with the use, control or management of the capital asset in relation to the municipality’s interests;
(d) any comments or representations on the proposed granting of the right received from the local community and other interested persons;
(e) any written views and recommendations on the proposed granting of the right by the National Treasury and the relevant provincial treasury;
(f) the interests of any affected organ of state, the municipality’s own strategic, legal and economic interests and the interests of the local community; and
(g) compliance with legislative regime applicable to the proposed granting of the right.”

The Hornlee Taxi Rank have been unused from the day it have been completed and it is thus not foreseen that the portion of Erf 3281, (Hornlee) Knysna will be required for the municipality’s own use during the period for which the rights is to be granted.

The Western Cape Department of Transport and Public Works is proposing a monthly rental amount of R1.00. The current clinic in Hornlee is unsafe and a new clinic needs to be erected as soon as possible. A new clinic will be to the benefit of the residents of Hornlee and the property will be used.

Any comments or representations from the local community and other interested persons shall be gathered during the advertising process.

The written views and recommendations should be requested from National Treasury and the relevant provincial treasury during the advertising process.

The Western Cape Department of Transport and Public Works, The Western Cape Department of Health will be positively be affected, and the municipality’s own strategic, legal and economic interests or the local community will not be negatively effecte.

The application is tabled before the Municipal Council for an in principle approval that the right be granted and that all relevant legislation be complied with.

FINANCIAL IMPLICATIONS

There would be no negative financial impact on Knysna Municipality as the applicant will be liable for establishing a clinic on a portion of Erf 3281, (Hornlee) Knysna. All other incidental costs will be for the account of the applicant.

RELEVANT LEGISLATION

Local Government: Municipal Finance Management Act, 2003
Asset Transfer Regulations 2008
Knysna Municipality’s Management of Immovable Property Policy
RECOMMENDATION OF THE MUNICIPAL MANAGER

[a] That the report and annexure regarding the request for a lease agreement on a portion of Erf 3281, (Hornlee) Knysna by the applicant, be noted;

[b] That the proposed lease agreement, be noted;

[c] That the Municipal Manager be instructed to advertise the intended leasing of a portion of Erf 3281, (Hornlee) Knysna to The Western Cape Department of Transport and Public Works to use the unused Hornlee Taxi Rank as a replacement clinic; and

[d] That a further report be submitted to a following Governance and Economic Development Committee meeting after the advertising as mentioned in [c] above have been completed, which report must include comments from the Technical Services, Finance, Community Services and Planning and Development Directorates.

APPENDIX / ADDENDUM

ANNEXURE A - Proposed lease agreement.

File Number : 7/2/2/1
Execution : Municipal Manager
            Director : Corporate Services
            Manager : Legal Services
LEASE AGREEMENT

1 PARTIES
The parties to this agreement are:

Knysna Municipality, being the party identified in item 1.1 of Schedule A herein represented by himself, he being duly authorised.

(hereinafter referred to as the “lessor”);

and

the Western Cape Government via its Department of Transport and Public Works, herein represented by Shane Duane Hindley, (hereinafter referred to as the “lessee”).

2 DEFINITIONS AND INTERPRETATION

2.1 In this agreement, unless the context indicates otherwise, the following words have the meaning assigned to them hereunder:

“adjustment date” – means the date referred to in item 8 on Schedule A on which date the escalated rate comes into effect:

“the/this agreement” – means the agreement set out in this document together with Schedule A, Schedule B, Schedule C, Schedule D thereto and any other schedules annexed thereto:

“building” – means the entire structure known by the name as set out in item 2.2 of Schedule A and situated on the property set out in item 2.4 of Schedule A:

“commencement date” – means the date stipulated in item 7 on Schedule A on which date the lease commences:

“commencement rental” – means the rental payable at the commencement of the lease as is stipulated in Schedule B:
“day” – means any day other than a Saturday, Sunday or official public holiday in the Republic of South Africa;

“escalation rate” – means the percentage mentioned in item 9 on Schedule A, which adjusts the rental on every adjustment date;

“expenses” – means those disbursements in respect of the premises which are occasioned by the ownership or the operation thereof, including but not limited to, assessment rates, municipal levies, air-conditioning maintenance, lift maintenance and insurance premiums;

“GCC” – means the General Conditions of Contract, as amended from time to time, issued by the National Treasury of the Government of the Republic of South Africa for purposes of goods and services procurement;

“Initial lease period” – means the initial period of the lease, as set out in item 3 of Schedule A;

“lessee” – means the Government of the Western Cape, (herein represented by the Head of Component: Immovable Asset Management in the Department of Transport and Public Works (or his duly authorised delegate) its successor-in-title and/or its duly authorised employees, agents, intermediaries, representatives and if and to the extent applicable, shall extend to the invitees;

“lessor” – means the party identified in item 1.1 of Schedule A (herein represented by the person identified in item 1.1.4 of Schedule A who by his/her signature hereto warrants that she/he is authorised to sign this agreement on behalf of the lessor), its successor-in-title and/or its duly authorised employees, agents, intermediaries and/or representatives;

“occupant” – the body defined in item 1.2 of Schedule A, being the body which will physically occupy the premises for the duration of the agreement of the lease;

“party / parties” – means the lessee, and the lessor or any of them as determined by the context;

“premises” – means the building and/or the structure and/or the land, or portions thereof, as set out in item 2.1 of Schedule A and a plan of which is attached as Schedule D, which forms the subject of this agreement;
“repairs” – means everything which is required to be done in order to achieve the same goal as that envisaged in the definition of “maintenance”, but which requires more labour and more expense than maintenance, such as the replacement of cables, taps, locks, floor tiles, geysers and the like. The parties are agreed that normal wear and tear can through time require repairs;

“secondary lease period” – means the period mentioned in item 4 of Schedule A, for which this agreement may be extended by the lessor or the lessee from the date on which the initial lease period expires;

“signature date” – means the date of signature of this agreement by the party which signs last in time;

“termination date” – means the date stipulated in item 10 of Schedule A on which the lease terminates, unless extended for the secondary lease period, as more fully detailed in clause 4 hereof;

“VAT” – means Value-Added Tax in terms of the VAT Act; and

“VAT Act” – means the Value-Added Tax Act (No. 89 of 1991), together with all amendments thereto and all regulations published thereunder from time to time:

2.2 The clause headings of this agreement have been inserted for reference purposes only and shall not be taken into account in its interpretation. Unless the context indicates otherwise, words importing the singular shall include the plural, words importing persons shall include natural persons and created entities and the state and vice versa;

2.3 If a provision in a definition is a substantive provision conferring rights or imposing obligations on any party, effect shall be given to it as if it were a substantive provision in the body of the agreement, notwithstanding that it is in the definitions clause.

2.4 Any reference to an enactment, regulation, rule or by-law is to that enactment, regulation, rule or by-law as at the signature date, and as amended or replaced from time to time.

2.5 Where any number of days is prescribed, such number shall exclude the first and include the last day, unless the last day falls on a Saturday, Sunday or public holiday in the Republic of South Africa, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday.
2.6 The use of the word “including” followed by a specific example/s shall not be construed as limiting the meaning of the general wording succeeding it and the eisdem generis rule shall not be applied in the interpretation of such general wording or such specific example/s.

2.7 The expiration or termination of this agreement shall not affect those provisions of this agreement which expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding the fact that the clauses themselves do not expressly provide this.

2.8 In its interpretation, the contra proferentem rule of construction shall not apply (this agreement being the product of negotiations between the parties) nor shall this agreement be construed in favour of or against any party by reason of the extent to which any party or its professional advisors participated in the preparation of this agreement.

3 THE LEASE

The lessor hereby leases the premises to the lessee who hires the premises on the terms and conditions set out in this agreement, for occupation by the occupant, it being specifically recorded and notwithstanding anything to the contrary contained in this agreement, that the only persons who are mandated to negotiate, enter into, amend or otherwise agree the terms and conditions of this agreement are the lessor and lessee provided that any terms and conditions which are specifically exercisable by the occupant in terms of this agreement, shall be so exercisable despite this clause 3.

4 DURATION AND RENEWAL

4.1 This agreement shall commence on the commencement date and shall endure for the period as specified in item 3 of Schedule A as the initial lease period.
4.2 Upon the expiry of the initial lease period, the lessee shall have the option of renewing this agreement for an additional period as specified in item 4 of Schedule A as the secondary lease period upon the terms and conditions contained in this agreement provided that in respect of rental payable from the date on which the secondary lease period commences ("the renewal date"), the parties will agree on a market related rental for the premises. The annual escalation rate applicable during the secondary lease period shall be limited to headline inflation or the escalation rate applicable during the initial lease period, whichever is the greater:

4.3 The lessee shall give written notice to the lessor of its intention to exercise the option to renew this agreement (referred to in clause 0 above) by no later than 3 months prior to the expiry of the initial lease period. Should the lessee fail to so exercise the option and the lessee remains in occupation of the premises after the expiry of the initial period or where the option is exercised and the lessee remains in occupation of the premises after expiry of the secondary lease period, this agreement shall continue on a month to month basis on the same terms contained in the Agreement but subject to escalations in the rental until such time as either of the parties gives the other a written notice terminating this agreement, in which event, this agreement shall terminate at the end of the month following the month in which the notice was given.

4.4 All extensions to the lease period in this agreement, and any changes to the terms and conditions of lease during such extended period, shall be concluded in writing and signed by the parties prior to the termination date or expiry of any extended period, as the case may be.

5 THE RENTAL

5.1 During the initial lease period, with effect from the commencement date, the monthly rental payable by the lessee to the lessor shall be as specified in Schedule B.

5.2 The lease commences with the commencement rental.

5.3 The rental shall be paid by the lessee to the lessor, monthly in advance on or before the 7th (seventh) day of each and every month.

5.4 All payments made by the lessee to the lessor in terms of this agreement, shall be effected by electronic payment directly into the lessor’s nominated bank account.
5.5 The parties agree that all rentals payable in terms of this agreement shall include VAT where such tax is payable. The lessor shall specify such tax for record and tax purposes separately from the basic rental.

5.6 The lessee undertakes to pay all VAT, at the standard rate applicable from time to time, leviable on any amounts payable by the lessee in terms of this agreement.

5.7 The lessor shall be liable to pay all rates, taxes, other regulatory amounts and levies in respect of the premises to the relevant authority as well as any expenses and increases.

6 USE OF THE PREMISES

6.1 The lessee records that it will use the premises for the purpose specified in item 5 of Schedule A and for any legitimate Government purpose. Where the lessee uses the premises for a purpose other than its intended purpose, the onus shall rest on the lessee to obtain and maintain all necessary permits and/or consents for the use of the premises for that purpose.

6.2 The lessor hereby warrants and undertakes that the premises are fit for use for the purpose set out in item 5 of Schedule A.

6.3 The lessor shall be obliged to obtain such consents and authorisations (excluding trade and other licences) as may be required by competent authorities or title conditions to enable the lessee to use the premises for the purpose referred to in 6.1.

7 OCCUPATION OF THE PREMISES

The lessor warrants the lessee's right to free and undisturbed possession of the premises from the commencement date until termination of this agreement, subject thereto that any delay in taking possession due to avoidable actions or omissions of the lessee, shall not be regarded as a delay on the part of the lessor. The date of occupation shall be the date on which the lessee occupies the premises, which shall also be the date of commencement of the lease.
8 CONDITION OF THE PREMISES AT THE COMMENCEMENT DATE AND AT THE TERMINATION DATE

Schedule C contains details of the work required by the lessee, the party responsible for effecting those work and the party who bears the costs in respect thereof.

9 EXPENSES, MAINTENANCE AND REPAIRS

9.1 The lessee shall be responsible for and pay all and any expenses in respect of the premises.

9.2 The lessee shall be responsible for contracting with the suppliers of utilities to the premises and shall be directly responsible for payment of these charges and any connection fees and deposits in respect thereof.

9.3 The lessee shall be responsible for and will pay the cost of all electricity, water and/or sewerage consumed on the premises for the duration of this agreement. Electricity and/or water and/or sewerage consumed shall be charged according to the relevant meter reading, provided that the consumption of water, electricity and sewerage in the premises shall be proved prima facie by reading of meters or sub-meters and recording same.

9.4 In the event of the premises being a portion of a property and it consequently being necessary to determine the lessee’s pro rata share in respect of consumption of necessary services, the pro rata share of the lessee, for the purpose of this agreement, shall be determined by calculating the area of the premises as a fraction of the total area of the building.

10 OBLIGATIONS OF THE LESSOR

In addition to any other obligations contained in this agreement, the lessor shall be responsible for:

10.1 Municipal rates (existing and future) levied on ownership (including rates increases);

11 OBLIGATIONS OF THE LESSEE

In addition to any other obligations contained in this agreement, the lessee shall:
11.1 Not use the premises or allow them to be used, in whole or part, for any purpose other than that stated in Schedule A;

11.2 Be responsible for all reasonable security, manned or otherwise, necessary to protect the premises;

11.3 Not cause or commit any unreasonable nuisance on the premises or cause any annoyance or discomfort to neighbours or the public;

11.4 Not unreasonably leave refuse or allow it to accumulate in or about the premises;

11.5 Refrain from interfering with any installations or systems serving the premises;

11.6 Take all reasonable measures to prevent blockages and obstructions from occurring in drains, sewerage pipes and water pipes serving the premises;

11.7 At all times comply with any law, by-law or regulation of the local authority relating to the conduct of its business at the premises and also with the conditions of the title deed under which the premises are held by the lessor;

11.8 Not be permitted to place such electrical or other signage on the exterior of the premises without the prior written consent of the lessor;

11.9 Forthwith disclose in writing to the lessor details of any act, matter or thing, stored or carried out upon the premises which may affect, vitiate or endanger the fire policy in respect of the property;

11.10 Be responsible for the costs of water, electricity and sewerage consumption to the extent that these are separately metered; and

11.11 Be responsible for the costs of refuse removal and sanitary services.
12 VACANT OCCUPATION

12.1 The Lessee retains the right to cancel this Lease if it is unable, for whatever reason, to obtain vacant occupation from the Lessor within a period of seven Business Days after the Commencement Date. In such an event the Lessee will not be responsible for any damages due or incidental to the cancellation of the Lease.

12.2 The Lessor will not be liable for any claim in respect of any damages whatsoever which the Lessee may suffer if the Lessee cannot take possession of and exercise control over the Lease Area due to any cause beyond the control of the Lessor.

13 FIRE FIGHTING EQUIPMENT AND LIFTS

13.1 The lessor shall be obliged to install, maintain and operate on the premises fire extinguishing and fire detection equipment complying with the National Building Regulations and Building Standards Act (Act No. 103 of 1977) as amended, and/or any other applicable legislation.

13.2 The lessor shall be obliged to maintain the lifts and ensure that regular checks are done in accordance with the Occupational Health and Safety Act (Act No. 85 of 1993) as amended and/or any other applicable legislation.

13.3 The lessor shall provide the lessee with quarterly reports of regular checks done on the fire extinguishers and lifts to ensure safety and security of the occupants of the premises.

14 ALTERATIONS, ADDITIONS AND IMPROVEMENTS

14.1 The lessee shall not make any alterations or additions to any of the buildings, the premises or any part thereof, without the lessor’s prior written consent, but the lessor shall not withhold its consent unreasonably to any such alteration or addition. In the event that the lessee does make any such prohibited alterations or additions, it is agreed between the parties that such alterations and/or additions shall become an immovable part of the respective building or premises to which it is made and shall thus become the property of the lessor who shall not be obliged to compensate the lessee in respect of such alterations and/or additions. Where the lessor has given its prior written consent to any alteration or addition and such alteration or addition has become an immovable part of the building or premises and has added value to the building or premises, the lessor shall be obliged to compensate the lessee in respect thereof, unless otherwise agreed between the parties prior to such alteration or addition being made.
15 DAMAGE TO OR DESTRUCTION OF THE PREMISES

15.1 In the event of the premises being destroyed and therefore rendered totally unfit for occupation, this agreement shall be terminated automatically unless the destruction of the premises is due to the wilful intent or negligence of the lessee and/or occupant.

15.2 In the event of the premises being damaged and remaining partially suitable for the purposes of the lessee, the parties shall be entitled to terminate this agreement by thirty (30) days' notice in writing given to the other party within thirty (30) days after such destruction or damage unless the destruction of the premises is due to the wilful intent or negligence of the lessee and/or occupant in which case only the lessor shall be entitled to terminate this agreement as directed above.

15.3 Should no notice in terms of 15.1 above be given, then this agreement shall continue and the lessor shall be obliged to proceed expeditiously with the work of rebuilding the premises. Should the parties continue with the agreement, the lessee shall be entitled to a reduction in rental to the extent to which the lessee is deprived of the full and beneficial use and occupation of the premises until such time as the premises have been rebuilt or re-instated provided that the damage or destruction is not due to the wilful intent or negligence of the lessee and/or occupant in which case the lessee shall not be entitled to a reduction in rental as contemplated herein and shall remain liable for the full rental.

15.4 Should there be any dispute as to the extent to which the premises have been damaged and/or the extent to which the premises are unfit for occupation and capable of being used for the purpose for which they are let, the dispute shall be referred to an expert, who shall act as an expert and not as an arbitrator, and whose decision shall be final and binding on the parties. The parties shall jointly agree on who the expert shall be, failing which the expert shall be appointed by the chairperson of the Law Society of South Africa or his delegate.

16 BREACH

16.1 Subject to any specific provision in this agreement to the contrary, should the rental or any other amount payable by the lessee in terms of this agreement not be paid by due date and the lessee fail to pay such rental within 14 (fourteen) days after receipt of written notice by the lessor requiring it to do so, or such longer period as may be reasonable in the circumstances; subject to due process of law; the lessor shall be entitled to claim specific performance, cancel this agreement and retake possession of the premises (without prejudice to any of its other rights under this agreement or at all) and/or claim damages.
16.2 In addition to the lessor’s rights contained in 17.1 above, should either party breach any other obligations in terms of this agreement and fail to remedy such breach within 14 (fourteen) days of written demand from the aggrieved party to do so, or such longer period as may be reasonable in the circumstances, the aggrieved party shall be entitled to cancel this agreement or claim specific performance, in either case, without prejudice to the aggrieved party’s rights to claim damages from the offending party.

17 MANAGEMENT RULES

The lessee shall comply with all management rules as may be prescribed by the lessor from time to time provided that they are fair, reasonable and justifiable.

18 LESSORS RIGHT OF ENTRY AND CARRYING OUT OF WORKS

The lessor’s representatives, agents, servants and contractors may at reasonable times and on reasonable notice (save for the in the event of an emergency), without thereby giving rise to any claim or right of action on the part of the lessee or the occupant of the property or any part thereof, enter the property or any of the buildings in order to inspect them, to carry out any necessary repairs, replacements, or other works, or to perform any other lawful function in the bona fide interests of the lessor or the lessee or the occupant, but the lessor shall ensure that this right is exercised with due regard for and a minimum of interference with the beneficial enjoyment of the property by those in occupation thereof, and provided further that such rights will be exercised subject to the lessee’s specific security requirements relating to the physical security of the property.

19 CESSION, ASSIGNMENT AND SUB-LETTING

The lessee shall not, except with the prior written consent of the lessor, which shall not be unreasonably withheld:

19.1 cede or assign all or any of the rights and obligations of the lessee under this agreement; or

19.2 sublet the premises in whole or in part; or

19.3 give up possession of the premises or any portion thereof to any third party.
20 NON-WAIVER

20.1 Neither party shall be regarded as having waived, or been precluded in any way from exercising, any right under or arising from this agreement by reason of such party having at any time granted any extension of time for or having shown any indulgence to the other party with reference to any payment or performance hereunder, or having failed to enforce, or delayed in the enforcement of any right of action against the other party.

20.2 The failure of either party to comply with any non-material provision of this agreement shall not excuse the other parties from performing their obligations hereunder fully and timeously.

21 DOMICILIUM CITANDI ET EXECUTANDI

21.1 The parties respectively choose as domicilium citandi et executandi and as the address for the serving of notices the address appearing underneath their names in Schedule A (and the lessor is explicitly barred from serving such notices on officials and offices in the Regions/Provinces).

21.2 Any notice given by one of the parties to the other (“the addressee”) which:

21.2.1 is delivered by hand to a responsible person during ordinary business hours at the physical address chosen as the addressee’s domicilium citandi et executandi shall be deemed to have been received by the addressee on the date of the delivery, unless the contrary is proved;

21.2.2 is posted by prepaid registered post from an address within the Republic of South Africa to the addressee at the addressee’s domicilium citandi et executandi, shall be deemed to have been received by the addressee on the tenth (10th) business day of the date of posting unless the contrary is proved; or

21.2.3 is faxed to the chosen fax number, during ordinary business hours shall be presumed to have been received by the addressee at the time of transmission of the fax. Alternatively, if not faxed during normal business hours then at twelve o’clock on the 1st business day following the day on which it was faxed.

21.3 Either party shall be entitled, on 14 days’ notice to the other, to change the address of his domicilium citandi et executandi.
22 WARRANTY OF AUTHORITY

The parties hereby warrant that each of them has the power, authority and legal right to sign and perform this agreement and that this agreement has been duly authorised by all necessary actions of its directors, to the extent applicable, and constitutes a valid and binding obligation on it in accordance with the terms thereof.

23 SEVERABILITY

Any provision in this agreement which is or may become illegal, invalid or unenforceable in any jurisdiction affected by this agreement shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability and shall be treated pro non scripto and severed from the balance of this agreement, without invalidating the remaining provisions of this agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

24 WHOLE AGREEMENT

24.1 This is the entire agreement between the parties.

24.2 Neither party relies, in entering into this agreement, on any warranties, representations, disclosures or expressions of opinion, which have not been incorporated into this agreement as warranties or undertakings.
24.3 No variation, alteration, or consensual cancellation of this agreement shall be of any force or effect unless reduced to writing and signed by the duly authorised representatives of both parties.

SIGNED AT.............................................. ON THIS THE ................DAY OF.......................... 20.....

WITNESSES

1.  ......................................................... 2.  .........................................................
   FULL NAME AND SIGNATURE      FULL NAME AND SIGNATURE

...............................................................  
SIGNATURE OF LESSOR / REPRESENTATIVE

...............................................................  
FULL NAME

SIGNED AT.............................................. ON THIS THE ................DAY OF.......................... 20.....

WITNESSES

1.  ......................................................... 2.  .........................................................
   FULL NAME AND SIGNATURE      FULL NAME AND SIGNATURE

...............................................................  
SIGNATURE OF LESSEE

FULL NAME

...............................................................  
CAPACITY
SCHEDULE D: LEASE AGREEMENT: FORMER HORNLEE TAXI RANK
The Parties:

1.1 The Lessor is: Knysna Municipality

1.1.1 Registration nr (company) or ID nr (individual): 670304 5721 08 4

1.1.2 VAT reg nr.: 4350193876

1.1.3 of Domicilium Citandi et executandi:

5 Clyde Street
Knysna
6570

1.1.4 Herein represented by:

Dr Silembele Wiseman Vatala, The Municipal Manager, Knysna Municipality

who hereby warrants he/she is duly authorised to do so by the attached resolution.

Hereinafter referred to as the lessor

1.1.5 Tel nr: 0443026459
Fax nr: 0866295042
Postal address: P.O. Box 21, Knysna, 6570

1.2 The occupant is: WCG: Department of Health

Herein represented by:

Dr Laura Angeletti-Du Toit

who hereby warrants he/she is duly authorised to do so by the attached resolution.

Hereinafter referred to as the occupant

1.3 The Lessee is: WCG: Department of Transport and Public Works

of Domicilium Citandi et executandi:

9 Corp Street, Cape Town

2 The Premises leased:

2.1 The Premises:

Portion of Erf 3281, Knysna (c/o Vigilant Drive and Stroebel Street)
as reflected on the diagram annexed hereto marked “Schedule D”

2.2 The Building name:

Former Taxi Rank, Horntree

2.3 The Building address:

Portion of Erf 3281, Knysna (c/o Vigilant Drive and Stroebel Street)

2.4 The property:

Portion of Erf 3281, Knysna (c/o Vigilant Drive and Stroebel Street)
### Lease period

### Renewal period

### Use of premises
- Clinic

### The lessee's pro rata share
- 0%

### Commencement date

### Adjustment date

### Escalation rate (%)

<table>
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<tr>
<th>Description</th>
<th>On: Rental</th>
<th>On: Operating costs</th>
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<tr>
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<tr>
<td>Covered Parking</td>
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### Termination date

### Special conditions

In terms of the Revenue Act and the FEMA all suppliers conducting business with the State are required to provide a valid Tax Clearance Certificate. Therefore, should a Landlord be unable to meet this requirement:

a. The Landlord shall be given a period not exceeding six (6) months from date of signature to regularize their tax affairs with the South African Revenue Services (SARS).

b. If this period lapses before the tax clearance certificate is obtained, DPW will have the right to terminate the agreement.

c. DPW and its Client Department (tenant) must have the right to remain in the leased building until the alternative accommodation can be procured.
7. In committee Items (See separate agenda)

8. Closure

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