

ITEM NUMBER : C 42/03/11

RECOMMENDATION FROM THE EXECUTIVE MAYOR: 23 MARCH 2011

SMC 04/03/11 MFULENI EARLY CHILDHOOD DEVELOPMENT (ECD) CENTRE

RECOMMENDED that:

- (a) Council approve the original capital expenditure of R1 million, funded by a revenue contribution from Council of R600 000 and a CGD of R400 000 in donor funding and that Council request the Southern Africa Development Initiative (SADI) to provide details of such donations received in order for Council to formally acknowledge the gesture; and further, that confirmation of actual disbursements against these donations be requested from SASDI
- (b) Council approve the proposal for Phase II of the project in the estimated amount of R1 million, to be funded by a revenue contribution of R250 000 from Council and R750 000 in donor funding
- (c) formal details of proposed donor funding for Phase II be obtained from SASDI, confirming who the donors are and the nature of disbursements relevant to the Council's asset
- (d) following acknowledgement and approval of the project by Council, the formal appointment of SASDI as the developer be processed through the SCMBAC and confirmed by the City Manager as a deviation appointment and requiring a condonation as the project has largely already been undertaken to a large extent
- (e) Council refer the matter to SCOPA for investigation and report back on the unauthorised and/or irregular expenditure, the condonation of such unauthorised expenditure and any other appropriate recommendations to Council.

REPORT TO MAYORAL COMMITTEE



CITY OF CAPE TOWN | ISIXEKO SASEKAPA | STAD KAAPSTAD

1. ITEM NUMBER : **SMC 04/03/11**

2. SUBJECT

MFULENI ECD CENTRE LSU B0857/1013

ONDERWERP

MFULENI-VROEëKINDONTWIKKELINGSENTRUM (VKO) LSU B0857/1013

ISIHLOKO

IZIKO LOPHUHLISO LWABANTWANA ABASELULA LASE-MFULENI LSU B0857/1013

3. PURPOSE

To advise the Mayoral Committee of the measures required to regularize unauthorized expenditure.

4. FOR DECISION BY

Council

5. EXECUTIVE SUMMARY

At a meeting on 16 September 2010 the Mayoral Committee considered a report submitted by the Economic and Social Development Directorate requesting approval to make a (further) grant in aid to Southern Africa Development Initiative (SASDI) of R250 000 for Phase II of an early childhood development centre (ECD) in Mfuleni.

It was disclosed at the meeting that the construction was in fact on Council land and the building would be handed over to the City for operation as an ECD facility upon completion.

Further, the initial Phase had been undertaken under a similar arrangement whereby SASDI had been given a grant by the Directorate of R600 000 to



undertake the development and construction of the facility to accommodate 250 children.

The item was withdrawn after concern was raised that this process had been in contravention of the Municipal Finance Management Act and such expenditure was potentially irregular and unauthorized.

This report confirms this to be the case and proposes remedial action to rectify the legal non-compliance.

6. RECOMMENDATIONS

Not delegated: for decision by Council:

It is recommended that:

- (a) Council approve the original capital expenditure of R1 million, funded by a revenue contribution from Council of R600 000 and a CGD of R400 000 in donor funding; that Council request SASDI to provide details of such donations received in order for Council to formally acknowledge the gesture; further, confirmation of actual disbursements against these donations to be requested from SASDI.
- (b) Council approve the proposal for Phase II of the project in the estimated amount of R1 million, to be funded by a revenue contribution of R250 000 from Council and R750 000 in donor funding.
- (c) Formal details of proposed donor funding for Phase II be obtained from SASDI, confirming who the donors are and the nature of disbursements relevant to the Council's asset.
- (d) Following acknowledgement and approval of the project by Council, the formal appointment of SASDI as the developer be processed through the SCMBAC and confirmed by the City Manager as a deviation appointment and requiring a condonation as the project has already been undertaken to a large extent.
- (e) Council refer the matter to SCOPA for investigation and report back on the unauthorised and/or irregular expenditure, the condonation of such unauthorised expenditure and any other appropriate recommendations to Council.

AANBEVELINGS

Nie gedelegeer nie: vir besluitneming deur die Raad:

Daar word aanbeveel dat:

- (a) Die Raad die oorspronklike kapitaalbesteding van R1 miljoen goedkeur wat befonds is deur 'n inkomstebydrae van die Raad ten bedrae van R600 000 en 'n CGD van R400 000 vanuit donateursfondse; dat die Raad SASDI versoek om besonderhede te verskaf van sodanige skenkings wat ontvang is sodat die Raad die gebaar formeel kan erken; en voorts dat SASDI gevra word om bevestiging van werklike uitbetalings teen hierdie skenkings.

- (b) Die Raad die voorstel vir fase II van die projek teen 'n geraamde bedrag van R1 miljoen goedkeur wat befonds sal word deur 'n inkomstebydrae van R250 000 van die Raad en R750 000 vanuit donateursfondse.
- (c) Formele besonderhede van die voorgestelde donateursbefondsing vir fase II van SASDI verkry word, met bevestiging van wie die donateurs is en die aard van uitbetalings wat met die Raad se bate verband hou.
- (d) Na erkenning en goedkeuring van die projek deur die Raad, die SCMBAC die formele aanstelling van SASDI as die ontwikkelaar verwerk en die stadsbestuurder dit bekragtig as 'n afwykingsaanstelling wat 'n kondonering benodig aangesien die projek reeds grootliks aangepak is.
- (e) Die Raad die saak na die SKOOR verwys vir ondersoek en terugvoering oor die ongemagtigde en/of onreëlmatige besteding, die kondonering van sodanige ongemagtigde besteding en enige ander toepaslike aanbevelings aan die Raad.

IZINDULULO

Aziqunyaziswanga: isiqqibo seseBhunga:

Kundululwe ukuba:

- a) IBhunga maliphumeze inkcitho-mali yokuqala yemali eyinkunzi efikelela kwi-R1 yesigidi, nexhaswa ngemali yinkxaso yengeniso yeBhunga efikelela kuma-R600 000 ne-CGD efikelela kuma- R400 000 efunyenwe njengomnikelo. IBhunga malicele abe-SASDI ukuba babonelele ngeenkcukacha zemnikelo efunyenweyo ukuze iBhunga liwubulele ngokusesikweni lo mnikelo. Ngaphezulu, makucelwe isiqinisekiso sokuhlululwa ngqo kwalo mnikelo kwabe-SASDI.
- b) IBhunga maliphumeze isiphakamiso seSigaba II sale projekthi ngexabiso elithekelelwa kwi-R1 yesigidi, neza kuxhaswa ngemali yinkxaso yengeniso efikelela kuma-R250 000 efunyenwe kwiBhunga kunye nama-R750 000 ayinkxaso-mali yeminikelo.
- c) Makufunyanwe iinkcukacha ezisemthethweni zenkxaso-mali ephakanyisiweyo yeminikelo yeSigaba II kwabe-SASDI, eziqinisekisa ukuba ngoobani abanikeli kunye nohlobo lweentlawulo ezifaneleke kwimpahla yeBhunga.
- d) Emva kokwamkelwa nokuphunyezwa kweprojekthi liBhunga, makuqhutyelwe phambili nengqesho esesikweni yabe-SASDI njengabaphuhlisi neza kwenziwa kusetyenziswa inkqubo yokuNikezelwa kweThenda kuLuhlu lwaBaboneleli ngeenkonzo ze iqinisekiswe nguMphathi wesiXeko. Oku kuya kwenziwa njengengqesho enxahileyo kumgaqo-nkqubo nefuna ukuxhaswa njengoko ubukhulu becala le sele iqalisiwe le projekthi.

- e) IBhunga malidlulisele lo mcimbi kwi-SCOPA ukuze kwenziwe uphando yaye kufunyanwe nengxelo yokwenziweyo ngenkcitho-mali engagunyaziswanga kunye/okanye enxamnye nomthetho, ukuxhaswa kwenkcitho-mali engagunyaziswanga kunye nazo naziphi na izindululo eziya kwiBhunga.

7. DISCUSSION/CONTENTS

The Economic and Social Development Directorate entered into an agreement with Southern African Development Initiative (SASDI) to construct an early childhood development centre (ECD) in Mfuleni. The Directorate submitted a report to the Mayoral Committee and Council seeking approval to make a grant in aid to SASDI of R600 000 which was included in an Adjustment Budget in 2010. The Directorate did not advise Council that the construction of the facility was on Council property and that the facility would be operated by the Directorate.

Construction of the facility was undertaken by the SASDI under an agreement signed by the Acting Director: Social Development, using local labour and "volunteers" that were essentially tourists who were paid "travelling expenses" by the Directorate from another vote. (This is still to be investigated and the internal funding mechanism confirmed). In addition to the R600 000 grant in aid paid by the City, SASDI "secured grant funding from Holland" of (reportedly) R400 000, giving a total project cost of R1 million.

The intention of the Directorate is to lease the facility to an operator as an ECD centre without charge. The building will be owned by the City and the Social Development Department will oversee the operations and management of the facility by a service provider that will cover all operating costs relating to the crèche services to be rendered. However, it is envisaged and provided for in the business plan that the City provide for any depreciation costs and R50 000 per annum for maintenance.

In September 2010, the Directorate submitted a report to the Mayoral Committee seeking a further grant in aid contribution from the City towards Phase II of the construction, amounting to R250 000. It was indicated that "the Dutch" would provide a further R250 000 and another donor, Niall Mellon would contribute R500 000. For the first time it was indicated to the Committee that this was in fact a capital construction on Council land and as such, in terms of the MFMA, such a funding proposal and construction mechanism was unlawful. Accordingly, the report was withdrawn.

Based upon the prima facie evidence of unauthorized expenditure, the City Manager instituted a forensic investigation into the circumstances of the project. The investigation was undertaken independently by KPMG. Such is the complexity of the transactions and the extent to which legal provisions have been contravened, the investigation has taken a long time and still not all issues have been addressed.



In essence, the following contraventions took place;

- This is a capital project undertaken on Council land producing an asset for its own use.
- The legislation (MFMA) is very specific that such expenditure MUST be on an approved Capital Budget and all costs, including operating costs reported to Council before it approves the project.
- All Council work must be awarded in terms of MFMA Regulations and a Policy for Supply Chain Management.

The consequences of the Directorate's actions in dealing with this project are that;

- Council was not aware of the true purpose of the grant in aid motivated by them.
- No approved capital budget provision was made.
- Council was not informed of the operational costs of the project.
- Account was not taken of the "donor funding" contribution to the asset.
- No transparent tender process occurred.
- No controls were invoked to ensure the competency of the building contractor.
- "Travelling expenses" were disbursed to migrant workers.
- Formal relationships not formed with overseas donors who may seek guarantees regarding the disbursement of funds to a Council asset.

Each of the above consequences is a contravention of one or more legal provisions which the Council is bound to uphold. Such is the severity of the contravention of these provisions that the Act is specific that the Municipal Manager (or the delegated official) MUST investigate and take disciplinary action. Consequential to this and depending on whether such violations were intentional or just negligent, criminal proceedings are required.

The City Manager is addressing the issue of disciplinary action and this is ongoing. The Mayoral Committee and Council must address the procedural breaches of legislation and formally rectify this. Such rectification will not impact upon the disciplinary processes undertaken separately.

Action that is required is;

- Council must condone the original capital expenditure of R1 million, funded by a revenue contribution from the Council of R600 000 and a CGD of R400 000 from a Dutch donor. Council must request SASDI to give details of such donations received in order to Council to formally acknowledge the gesture. Further, confirmation of disbursements against these donations should also be requested from SASDI. Condonation can only occur after SCOPA has investigated the matter.
- Formal details of funding for Phase II must be obtained, again indicating who the donors are and the nature of disbursements relevant to the Council's asset.

- Upon acknowledgement and approval of the project by Council, the formal appointment of SASDI as the developer must be processed through the SCMBAC and confirmed by the City Manager. This will be a deviation appointment and a condonation as the project is ongoing.
- Given the unconfirmed qualifications of the developer, it is recommended that the structural integrity of the facility be professionally examined to ascertain that it is suitable as a building in which it is proposed to accommodate 250 children.
- Further investigations proceed in relation to other costs incurred in undertaking this project, such as the R170 000 disbursement to "volunteers".
- Council must refer the matter to SCOPA for investigation of unauthorized and/or irregular expenditure.

7.1. Constitutional and Policy Implications

There has been a contravention of the Municipal Finance Management Act and such expenditure was potentially irregular and unauthorized.

7.2. Environmental implications

Does your report have any environmental implications: No Yes

7.3. Financial Implications

Operating and Capital Budget Provisions:

Refer to Financial Summary at end of report.

7.4. Legal Implications

Report seeks to rectify breaches of the MFMA.

7.5. Staff Implications

Does your report impact on staff resources, budget, grading, remuneration, allowances, designation, job description, location or your organisational structure?

No

Yes

7.6. Other Services Consulted

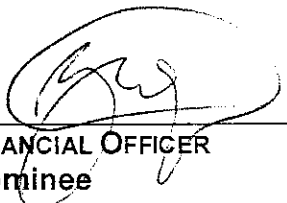
Forensic Services

Legal Services



FOR FURTHER DETAILS CONTACT :

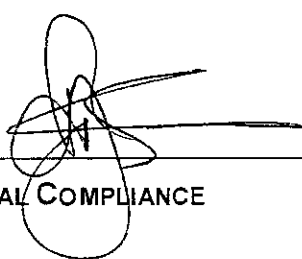
NAME	Mike Richardson
CONTACT NUMBERS	021 400 3265
E-MAIL ADDRESS	Mike.richardson@capetown.gov.za
DIRECTORATE	Finance
FILE REF NO	



CHIEF FINANCIAL OFFICER
 or his nominee

Comment:

NAME Zuluswa Nqayeli
 DATE 16/03/2011



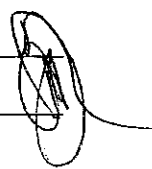
LEGAL COMPLIANCE

- REPORT COMPLIANT WITH THE PROVISIONS OF COUNCIL'S DELEGATIONS, POLICIES, BY-LAWS AND ALL LEGISLATION RELATING TO THE MATTER UNDER CONSIDERATION.
- NON-COMPLIANT

NAME JEAN ROMAN
 TEL (021) 400 2753
 DATE 22/03/2011

Comment:

Certified as legally compliant:
 Based on the contents of the report.





EXECUTIVE DIRECTOR
 Mike Richardson

Comment:

DATE 18/3/2011

FINANCIAL SUMMARY OF HOW THE PROJECT AND RELATED COST SHOULD HAVE BEEN REFLECTED IN TERMS OF SEC 19 (MFMA) :				
1	PROJECT INFORMATION REQUIRED: RECEIVING WBS PROJECT DESCRIPTION	C09.00014-F2 Mfuleni ECD	C09.00014-F3 (to be created) Mfuleni ECD	
2	FUNDS AVAILABLE:: 2009/2010 2010/2011: 2011/2012: FUNDS REQUIRED 2009/2010: 2010/2011: 2011/2012:	R 0 0 0 600 000 250 000 0	R 0 0 0 400 000 750 000 0	
3	CAPITAL EXPENDITURE AUTHORITY AVAILABLE : CAPITAL EXPENDITURE AUTHORITY REQUIRED : EX:	R 0 850 000 Revenue	R 0 1 150 000 CGD: Private Sector	
4	OPERATING GRANT-IN-AID 2009/2010: 2010/2011:			Cost Centre 18050001 Cost Element 457100 600 000 250 000 (Virement required)
5	ESTIMATED OPERATING COSTS RESULTING FROM CAPITAL PROJECT (PER ANNUM): REQUESTING COST CENTRE NUMBER: ASSET CLASS NUMBER (per Asset Policy): USEFUL LIFE OF THE ASSET IN YEARS (per Asset Policy):	18050001 21400 30		
5.1	STAFF COST	R 0		
5.2	GENERAL EXPENSES (Insurance)	3 600		
5.3	REPAIRS & MAINTENANCE	50 000		
5.4	INTEREST ON BORROWINGS (ex EFF)	0		
5.5	DEPRECIATION (ex EFF & Revenue)	28 334		
5.6	LESS: INCOME/SAVINGS RESULTING FROM PROJECT	0		
5.7	= NET IMPACT	81 934		
5.8	NET IMPACT TO BE BORNE BY RATES			

ZUKISWA HQANGALI
MANAGER: OPERATING
BUDGET 400 1878

