

**AGENDA of the
Portfolio Committee: Infrastructure & Planning
19 February 2019
(Also the agenda for the Mayoral Committee Meeting: 27 February 2019)**

10.

HERMANUS: ERF 9212 HERMANUS, SITUATED IN ZWELIHLE: LEASE OF MUNICIPAL PROPERTY TO SIYAKHA COMMUNITY EDUCARE CENTRE AND ENRICHMENT PROJECT

7/2/3/1

N Liebenberg

(028) 316-3724

Hermanus Administration

7 January 2019

1. Executive Summary

To obtain approval to enter into a further lease agreement for a period of 3 (THREE) years with Siyakha Community Educare Centre and Enrichment Project in respect of municipal property, being Erf 9212 Hermanus, situated in Mbeki Street, Zwelihle (681m² in extent), for the purpose of operating and managing a centre for Early Childhood Development.

2. Service Delivery and Budget Implementation Plan - IGNITE

Infrastructure and Planning;
Property Administration

3. Compliance with Strategic Priority

Provision of democratic, accountable and ethical governance

4. Delegated Authority

Executive Mayor

5. Legal Requirements

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

6. Background/Discussion/Evaluation/Conclusion

Background

Siyakha Community Educare Centre and Enrichment Project has been utilising Erf 9212 Hermanus situated in Zwelihle since 1 June 2008 for the purpose of establishing and operating a centre for Early Childhood Development and delivers an essential service to the community of Zwelihle through the various services they offer to the children.

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The last agreement was for a period of 9 (NINE) years and 11 (ELEVEN) months which expired on 30 April 2018.

The locality and layout of the proposed lease area are indicated on the locality plan attached per "Annexure A".

Discussion

Siyakha Community Educare Centre and Enrichment Project applied for a further lease agreement of 9 (NINE) years and 11 (ELEVEN) months, but due to the reasons as stated below by the Municipality's Department of Social Development, a lease for a further 3 (THREE) years must rather be considered.

Siyakha Community Educare Centre and Enrichment Project applied for renewal before expiration of the lease agreement but unfortunately the application process could not be completed timeously due to the fact that there were internal matters that had to be sorted out between Siyakha Community Educare Centre and Enrichment Project and Enlighten Education, who are assisting them with registration and monitoring ECD facilities. The Department of Property Administration was also awaiting documentation from Siyakha Community Education Centre in order to proceed with the process of renewal. Thus the delay was from the applicant's side. The previous rental was levied annually and was levied on 1 July 2018. As there is now a tariff approved by Council for non-profit organisation/social care organisations, the rental charged will change to a monthly rental amount.

As Siyakha Community Educare Centre and Enrichment Project required a valid agreement for further registration and funding purposes it was decided, with the necessary approval, to enter into a three year lease agreement, which agreement is subject to a public participation process being followed and obtaining the approval of the Executive Mayor for the further lease period. The agreement stipulates that should the said conditions not be met, the lease agreement will be void *ab initio* and vacant possession will be given back to the Municipality within a reasonable period.

The area applied for have been used by Siyakha Community Educare Centre and Enrichment Project for nearly ten years without any complaints from the public. Siyakha Community Educare Centre and Enrichment Project's municipal account is paid to date.

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Evaluation

A. Administration of Immovable Property Policy of the Overstrand Municipality

The following conditions of said policy apply:

Paragraph 17: “Taking into consideration the nature and duration of the lease to be entered into, the leasing of immovable property may be affected by means of either:

- 17.1 a competitive process, which may include a closed or public tender or proposal call, specifically in circumstances listed in paragraph 18 below; or**
17.2 a direct lease.”

As the property is not classified as a business site and the leasing of the said property to Siyakha Community Educare Centre and Enrichment Project (a registered non-profit organisation) is in the interest of the community, i.e. not a commercial lease, and they have been leasing it successfully for the last 9 (NINE) years and 11 (ELEVEN) months, it is recommended that the property be leased directly to Siyakha Community Educare Centre and Enrichment Project without following a competitive process.

Paragraph 20.1: “The Municipality may grant a long term lease of municipal immovable property with an income value of less than R10 million only after:

- a) The Accounting Officer has approved the lease in principle;**
b) In the case of a direct lease, the proposed lease was advertised in terms of paragraph 10.1 and 10.2 above to invite the local community and other interested parties to submit comments or representations; and
c) The Executive Mayor, as delegated authority, has approved that the right may be granted.”

The Accounting Officer (Municipal Manager) approved in principle the lease of Erf 9212 Hermanus, situated in Zwelihle, to Siyakha Community Educare Centre and Enrichment Project for establishing and operating a centre for Early Childhood Development purposes on condition that the public participation process is followed. The proposed lease was advertised in the Village News on 19 December 2018 for a 30 (THIRTY) day comment/objection period.

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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.”

In this regard the rental charged will be in accordance with the tariff approved in the annual budget.

Paragraph 36: “All costs pertaining to a transaction, e.g. survey, advertisements, valuation, relocation or provision of services where necessary, shall be borne by the Lessee. The Municipality may, however, waive its right to claim all or any portion of the costs. Where necessary a deposit to cover the costs may be required.”

Siyakha Community Educare Centre and Enrichment Project will pay all costs relating to the renewal of the lease agreement which in this case so far is only the advertisement costs.

Paragraph 47: “Subject to paragraph 46 above, immovable property let by the Municipality shall be inspected at least once a year by the Municipality to ensure compliance with the terms and conditions of the agreement of sale or lease.”

The property will be inspected by the Property Administration Department at least once a year.

It is further confirmed that the other Conditions of Lease as stipulated in paragraph 36 – 50 of the said policy will be included in the lease agreement with the Applicant.

B. Advertisement/Notification

An advertisement for the lease of Erf 9212 Hermanus situated in Zwelihle (681m² in extent) was placed in the Village News on 19 December 2018 for a 30 (THIRTY) day objection/comment period. No objections/comments were received.

Conclusion

With reference to the above discussion it is recommended that the lease agreement with Siyakha Community Educare Centre and Enrichment Project be approved for a further period of 3 (THREE) years from 1 May 2018 at a rental amount of R140.00 (ONE HUNDRED AND FORTY RAND) (VAT excluded) per month which is the amount approved in the 2018/2019 budget.

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7. Financial Implications

The Municipality stands to gain rental in the amount of R140.00 (ONE HUNDRED AND FORTY RAND) (VAT excluded) per month where after the lease amount will escalate every year on the 1st of July in accordance with the tariffs stipulated in the Annual Budget as approved by Council, the next escalation to be on 1 July 2019. All expenses pertaining to the proposed lease will be borne by Siyakha Community Educare Centre and Enrichment Project.

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

Manager: Social Development: Mr G Smit – (028) 313 8035

Siyakha is cooperating with Enlighten Education Trust who was appointed by the Western Cape Department of Social Development to assist ECD facilities with registration and to monitor registered and unregistered facilities.

Notwithstanding, this department is of the opinion that a maximum lease agreement of three years should be considered. This department has been tasked with drawing-up an ECD policy which will, amongst others, look at suitable mechanisms to appoint external service providers to provide an ECD service from municipal facilities. The policy will therefore take some time but hopefully not more than two years. Hopefully the ECD policy can be completed within a year. Limiting the lease agreements for municipal ECD facilities will ensure that a new system can be implemented over a shorter period without too much bias and unfairness.

Senior Manager: Expenditure and Assets, Mr J Vorster - (028) 313 8046

As this is an income generating proposal involving an institution who delivers a service to the community of Zwelihle, with no intention to dispose of the asset, there is no objection to the report.

10. Annexures

Annexure A: Locality Plan

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RECOMMENDATION:

1. that the lease of municipal property, being Erf 9212 Hermanus, situated in Zwelihle (681m² in extent), to Siyakha Community Educare Centre and Enrichment Project for the purpose of operating and managing a centre for Early Childhood Development at the rental amount of R140.00 (ONE HUNDRED AND FORTY RAND) (VAT excluded) per month for a further period of 3 (THREE) years as from 1 May 2018 in terms of the Administration of Immovable Property Policy of the Overstrand Municipality, **be approved**, and
2. that the rental amount mentioned in 1 above escalate every year on the 1st of July in accordance with the tariffs stipulated in the Annual Budget as approved by Council, the next escalation to be on 1 July 2019.

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|---|----------------------|
| RESPONSIBLE OFFICIAL: | N LIEBENBERG |
| TARGET DATE FOR IMPLEMENTATION: | 27 MARCH 2019 |
| TARGET DATE TO INFORM APPLICANT: | 13 MARCH 2019 |
| TARGET DATE TO INFORM OBJECTOR: | N/A |

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7 January 2019

THIS MATTER SERVED BEFORE THE JOINT PORTFOLIO COMMITTEE ON 19 FEBRUARY 2019, WHICH COMMITTEE SUPPORTED THE RECOMMENDATION

RESPONSIBLE OFFICIAL:

N LIEBENBERG

TARGET DATE FOR IMPLEMENTATION:

27 MARCH 2019

TARGET DATE TO INFORM APPLICANT:

13 MARCH 2019

TARGET DATE TO INFORM OBJECTOR:

N/A

