

**AGENDA of the
Portfolio Committee : Investment & Infrastructure
5 April 2023
(Also the agenda for the Mayoral Committee Meeting : 24 April 2023)**

**8.
ERF 639 ZWELIHLE SITUATED AT 639 NTLABATI STREET, ZWELIHLE:
RENEWAL OF LEASE TO KHANYA EDUCARE CENTRE**

**R Marinus
3 March 2023**

Acting Manager: Property Administration

(028) 316 5609

1. Executive Summary

To obtain approval to enter into a further lease agreement with Khanya Educare Centre, hereafter referred to as “Khanya”, in respect of municipal property, Erf 639 Zwelihle (877m² in extent), situated at 639 Ntlabati Street, Zwelihle, hereafter referred to as “the Property”, for a period of 9 (NINE) years and 11 (ELEVEN) months for the purpose of operating the Khanya Early Childhood Development Centre. The locality map is attached hereto as “Annexure A”.

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)
- Municipal Asset Transfer Regulations (R. 878 of 2008)

6. Background/Discussion/Evaluation/Conclusion

Background/ Discussion

The Property has been used for the purpose of managing the Khanya Early Childhood Development Centre for many years with the first lease agreement signed on 12 August 1999. The Educare centre was previously managed by Hermanus Rainbow Trust, and subsequently a cession agreement was

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entered into between Overstrand Municipality, Hermanus Rainbow Trust and Khanya where the lease agreement was ceded to Khanya when Khanya registered as a separate entity.

The last lease agreement, which was for a period of 3 (THREE) years, expired on 30 September 2022.

Khanya applied for the renewal in time and the renewal process was also commenced with by the Property Administration Department in time. Unfortunately, due to the municipal account being in arrears (which was addressed sufficiently in order to motivate the renewal), the renewal process could not be proceeded with until the municipal account was paid up to date. The municipal account is now paid up to date and Khanya is committed to ensure that it stays paid up to date. The rental is still being levied on the account pending the outcome of the application as they are still in possession of the Property.

Should the renewal of the lease agreement be approved the renewal date will be backdated to commence the day after expiry of the previous agreement.

No complaints have been received from the community regarding the use of the Property by Khanya.

Evaluation

A. Administration of Immoveable Property Policy of the Overstrand Municipality

The following conditions of said policy apply:

Paragraph 4: “No application for the purchase, lease of or encroachment on immovable property (save for the instances mentioned in paragraphs 58 to 62 and 64.1 below) shall be processed unless the prescribed application fee as per tariff approved in the annual budget for that financial year has been paid, nor shall any proposed lease or encroachment (save for the instances mentioned in paragraphs 58 to 62 and 64.1 below) be advertised unless the applicant has confirmed, in writing, that he/she will bear all costs involved in such transaction including – but not limited to – legal, survey, re-zoning, sub-division, consolidations, advertisement, relocation or provision of services and, where applicable, a deposit as per prescribed rate to cover incidental costs has been paid.”

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As the application for renewal was received before the expiry of the last agreement there is no need for a formal application form to be completed and no application fee is payable.

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”.**

Paragraph 18: “A competitive process must at all times be followed in circumstances where:

- 18.1 the lease is for a long term with an income value in excess of R10 million;**
- 18.2 the lease is for a formal business premises with a market related rental;**
- 18.3 more than one party, in discretion of the municipality, is interested in the lease of the subject property; and/or**
- 18.4 by discretion of the municipality, a competitive process will best serve the interests of the community”.**

As the Property is not classified as a business site and the leasing of the Property to Khanya (a registered non-profit organisation) is in the interest of the community, and they have been leasing it successfully since 1999 under Hermanus Rainbow Trust and due to the nature of the lease and benefit to the community and especially the children of the area, it can be leased directly to Khanya without following a competitive process.

Although the proposed lease is for a long-term period the rental that will be received will not be more than R10 million. The current rental is set at a tariff for the lease of municipal property for registered Social Care Institutions/ Organisations/ NPO's/ PBO's/ Sport facilities/ Community organisations, being R167.84 (ONE HUNDRED AND SIXTY-SEVEN RAND AND EIGHTY-FOUR CENTS) (VAT excluded) per month, which rental will escalate annually in terms of the approved tariff in the financial budget of the Municipality.

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**

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- 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.*

Paragraph 22: “The in principle approval of the Accounting Officer must be obtained with any request for the renewal of the lease agreement.”

Khanya applied for the renewal of the lease agreement which was approved in principle by the Municipal Manager on 20 December 2022 for a period of 9 (NINE) years and 11 (ELEVEN) months, subject to a public participation process being followed, the submission and approval of a consent use application and further subject to the approval by the Executive Mayor as delegated authority of the long-term lease.

The Executive Mayor’s approval is hereby sought, and the proposed lease was advertised in The Hermanus Times on 8 February 2023 for a 30 (THIRTY) day comment/objection period. No objections have been received.

Paragraph 26: “In cases where a rental amount has been approved in the annual budget of the Municipality for certain types of leases and encroachments, the approved amount will be used for purposes of determining the rental amount”.

The tariff for the lease of municipal property to registered Social Care Institutions/ Organisations/ NPO’s/ PBO’s/ Sport facilities/ Community organisations will be levied. The agreement will be backdated from 1 October 2022 with a monthly rental amount of R167.84 (ONE HUNDRED AND SIXTY-SEVEN RAND AND EIGHTY-FOUR CENTS) (VAT excluded) per month. The agreement will stipulate that the rental amount will escalate annually in accordance with the tariff as 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.”

Khanya will be liable for the payment of all costs relating to the renewal of the lease agreement which in this case so far is only the advertisement cost.

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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.

B. Advertisement/Notification

An advertisement for the lease of the Property to Khanya was published in The Hermanus Times on 8 February 2023 for a 30 (THIRTY) day objection/comment period. No objection/comment was received.

Conclusion

With reference to the above discussion, it is recommended that the lease of the Property to Khanya be approved for a further period of 9 (NINE) years and 11 (ELEVEN) months from 1 October 2022 at a rental amount of R167.84 (ONE HUNDRED AND SIXTY-SEVEN RAND AND EIGHTY-FOUR CENTS) (VAT excluded) per month for the 2022/2023 financial year.

7. Financial Implications

The Municipality stands to gain rental in the amount of R167.84 (ONE HUNDRED AND SIXTY-SEVEN RAND AND EIGHTY-FOUR CENTS) (VAT excluded) per month from 1 October 2022 where after the rental amount will escalate annually on 1 July in accordance with the tariffs stipulated in the Annual Budget as approved by Council. All expenses pertaining to the proposed lease will be borne by Khanya.

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

Town Planner - Mr H Boshoff

“The property is zoned as Open Space Zone 2: Public Open Space according to the Geographical Information System (GIS). Since it is already developed as an Educare centre, and it is proposed to be leased on a long-term basis,

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the property rights should be formalised, application needs to be made for a consent use (refer to zoning scheme) for any other related uses permitted by the Municipality.

Since it is already leased to Khanya Educare Centre for educare purposes, the Town Planning Department has no objection to the extension of the lease agreement.”

Comments from Property Administration: A condition to this effect will be included in the lease agreement

Manager: Social Development - Mr G Smit

“Khanya has been operating from the property for a number of years and is a well-established and registered partial care ECD service provider. The social development department support the proposal to renew their lease.”

Senior Manager: Expenditure & Assets: Mr. J Vorster

“As this is a revenue generation proposal, with no intention of selling the asset, there is no objection against the application.”

10. Annexures

Annexure A1 & 2: Locality Plan

RECOMMENDATION:

1. that the renewal of the lease of municipal property, being Erf 639 Zwelihle (877m² in extent), to Khanya Educare Centre, for the purpose operating the Khanya Early Childhood Development Centre for a period of 9 (NINE) years and 11 (ELEVEN) months at a rental amount of R167.84 (ONE HUNDRED AND SIXTY SEVEN RAND AND EIGHTY FOUR CENTS) (VAT excluded) per month from 1 October 2022 in terms of the Administration of Immovable Property Policy of the Overstrand Municipality, **be approved**;
2. that the rental amount mentioned in 1 above escalate annually on 1 July in accordance with the tariffs stipulated in the Annual Budget as approved by Council, the first escalation to be on 1 July 2023; and
3. that the approval in 1 above be subject to the successful completion and approval of the necessary Town Planning processes.

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RESPONSIBLE OFFICIAL :	R OCTOBER
TARGET DATE FOR IMPLEMENTATION :	30 MAY 2023
TARGET DATE TO INFORM APPLICANT :	15 MAY 2023
TARGET DATE TO INFORM OBJECTOR :	N/A



