

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

11.

TWO PORTIONS OF ERF 2020 GANSBAAI SITUATED AT 7 THANDABUNTU STREET, MASAKHANE, GANSBAAI: RENEWAL OF LEASE TO HERMANUS RAINBOW TRUST

**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 Hermanus Rainbow Trust, hereafter referred to as "HRT", in respect of municipal property, being two portions of Erf 2020 Gansbaai specifically two rooms ($\pm 48\text{m}^2$ in extent) and an ablution facility ($\pm 25\text{m}^2$ in extent), situated at 7 Thandabuntu Street, Masakhane, Gansbaai, hereafter referred to as "the Property", for a period of 9 (NINE) years and 11 (ELEVEN) months for the purpose of a "Parenting Worx" programme, Early Childhood Development Training sessions, "Children's Circle of Support" programme, Soup Kitchen and an HIV programme. The locality map is attached hereto as "Annexure A1 & A2".

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)

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6. Background/Discussion/Evaluation/Conclusion

Background/ Discussion

HRT has been utilising the Property for many years and entered into a formal lease agreement with the Municipality in 2013 for the purpose of a “Parenting Worx” programme, Early Childhood Development Training sessions, “Children’s Circle of Support” programme, Soup Kitchen and an HIV programme.

The last lease agreement, which was for a period of 6 (SIX) years, expired on 31 October 2022.

HRT applied for the renewal in time and the renewal process was also commenced with by the Property Administration Department in time. Unfortunately, due to an investigation on the programmes and an outstanding report from HRT, the renewal process could not be proceeded with and finalised before the expiry of the last agreement. The municipal account is paid up to date and the rental is still being levied on the account, pending the outcome of the application as they are still in possession of the Property.

A lease agreement has since been drafted (for administrative and audit purposes) with special conditions included in the agreement stipulating that the lease agreement is subject to a public participation process being followed and the Executive Mayor’s approval (as delegated authority) allowing the Municipality to enter into the said long term agreement.

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 regarding the use of the Property have been received from the community.

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

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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.”

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 HRT (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 several years and due to the nature of the lease and benefit to the community, it can be leased directly to HRT 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 to 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.

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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.”**

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

HRT 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 Gans Berg News on 10 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 November 2022 with a monthly rental amount of R167.84 (ONE HUNDRED AND SIXTY-SEVEN RAND AND EIGHTY-FOUR CENTS) (VAT excluded). 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,

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however, waive its right to claim all or any portion of the costs. Where necessary a deposit to cover the costs may be required.

HRT 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 and if approved, the cost of the necessary Town Planning processes.

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 HRT was published in The Gans Berg News on 10 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 HRT be approved for a further period of 9 (NINE) years and 11 (ELEVEN) months from 1 November 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 November 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 HRT.

8. Staff Implications

None

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9. Comments from other Departments, Divisions and Administrations

Senior Town Planner - Mr S van der Merwe

“The comments from Town Planning remains the same as the comments provided by Town Planning dated 16 July 2018 with the only difference that Rooftop Base Station is no longer a primary right. Thus, a consent use application will be applicable. As such, the renewal of the lease agreement can only be supported on the basis that the lessee on his cost prepare and submit an application for consent use and obtain the applicable use rights in accordance with the Overstrand Land Use Scheme.”

Manager: Social Development - Mr G Smit

“When the lease agreement with Hermanus Rainbow Trust was renewed in 2019 – this department submitted the following comment:

“It is unclear exactly what service is being rendered. In terms of the Children's Act, a partial care is provided when a person, whether for or without reward, takes care of more than six children on behalf of their parents or caregivers during specific hours of the day or night, or for a temporary period, by agreement between the parents or the care-givers and the provider of the service, but excludes the care of a child.” Whenever this definition is applicable - the partial care facility must register as either an Early Childhood Development service; after school service; private hostel; or a temporary respite care service. The services that Rainbow Trust provide to parents is not of concern but rather the "Children's Circle of Support programme". Unless the parents accommodate the children on this programme, the programme might in likelihood have to register as a after school service, which, in terms of the Act, means the provision of meals, homework support, sporting activity support, life skills education and guidance and counselling support.

The Children's Act's intention is to protect the rights of children - where it is clear that a municipal facility will be used to provide services to children - we have to ensure that the service provider complies with the legislative requirements in doing so.

At that stage the department did not object to the renewal of the lease agreement. However, considering above mentioned comment, it is important that clarity be provided by HRT regarding the different programmes proposed for the facility. They have also proposed the exact same services in 2019, and it needs to be determined if these services are still relevant. They have been providing the services from the facility for a number of years and they should be able to proof the success of these programmes and the need for it to continue before another long-term lease is given.”

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Comment from the Property Administration Department: HRT was requested to submit a detailed report with timetables, attendance registers etc. on the programmes, specifically the Children's Circle of Support programme.

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 two portions of Erf 2020 Gansbaai (jointly ±73m² in extent), to Hermanus Rainbow Trust, for the purpose of a "Parenting Worx" programme, Early Childhood Development Training sessions, "Children's Circle of Support" programme, Soup Kitchen and an HIV programme 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 November 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.

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



