

**AGENDA of the  
Portfolio Committee : Investment & Infrastructure  
2 February 2022  
(Also the agenda for the Mayoral Committee Meeting : 21 February 2022)**

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7.

**ERF 9515 ZWELIHLE KNOWN AS “THE ZWELIHLE MALL”: DEVIATION FROM PARAGRAPH 18 AND 20.1(B) OF THE ADMINISTRATION OF IMMOVABLE PROPERTY POLICY OF 2015 ALLOWING THE MUNICIPALITY TO TEMPORARILY RENEW THE LEASE OF MUNICIPAL PROPERTY TO PEMZO CONSTRUCTION CC FOR A SHORT-TERM PERIOD - FINALISATION OF THE TENDER PROCESS**

7/2/3/1

A Le Roux

Manager: Property Administration

14 December 2021

(028) 316-5623

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### **1. Executive Summary**

To obtain approval from the Executive Mayor to enter into a further short-term lease agreement with Pemzo Construction CC in respect of Erf 9515 Zwelihle, ±1,280m<sup>2</sup> in extent, for the purpose to manage, sub-lease, supervise and maintain the property; and

To obtain approval from Council for the deviation from paragraph 18 of the Administration of Immovable Property Policy (as approved by Council on 25 November 2015) allowing the Municipality to enter into a further short-term lease agreement with Pemzo Construction CC in respect of Erf 9515 Zwelihle, ±1,280m<sup>2</sup> in extent, for the purpose to manage, sub-lease, supervise and maintain the property, without following a competitive bidding process, and

To obtain approval from Council for the deviation from paragraph 20.1(b) of the Administration of Immovable Property Policy (as approved by Council on 25 November 2015) allowing the Municipality to enter into a further short-term lease agreement with Pemzo Construction CC in respect of Erf 9515 Zwelihle, ±1,280m<sup>2</sup> in extent, for the purpose to manage, sub-lease, supervise and maintain the property, without following a public participation process.

### **2. Service Delivery and Budget Implementation Plan - IGNITE**

Infrastructure and Planning  
Property Administration

### **3. Compliance with Strategic Priorities**

Provision of democratic, accountable and ethical governance  
Promotion of tourism, economic and social development

### **4. Delegated Authority**

Partly delegated to the Executive Mayor

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**5. Legal Requirements**

- Municipal Asset Transfer Regulations (R. 878 of 2008)
- Administration of Immovable Property Policy of the Overstrand Municipality, as amended

**6. Background/Discussion/Evaluation/Conclusion**

**Background**

Pemzo Construction CC, hereinafter referred to as “Pemzo”, had a lease agreement with the Overstrand Municipality for the lease of Erf 9515 Zwelihle, also known as “Zwelihle Mall”, hereinafter referred to as “the Property”, for a total period of 6 (SIX) years for business purposes to manage, sub-lease, supervise and maintain the property. The lease agreement expired on 30 September 2021. Please see locality map hereby attached as Annexure A for easy reference.

On 30 June 2021 the Municipal Manager approved in principle the lease of the Property by means of a tender process.

**Discussion**

Although the process was commenced with in time, several considerations regarding the use of the property had to be discussed before the tender specifications could be prepared. This was done and the tender specifications meeting was held on 1 December 2021. The tender can only be advertised early this year whereafter the due tender process will be followed for the evaluation and adjudication of the thereof.

As it is in the best interest of the Municipality to not have a municipal building remain vacant due to the risk of vandalism the Municipal Manager approved in principle a short-term renewal for a period of 8 (EIGHT) months or 1 (ONE) month after the award of the tender, whichever comes first, subject to the Executive Mayor approving the renewal and Council approving the deviation from paragraphs 18 and 20.1(b) of the Administration of Immovable Property Policy.

**Evaluation**

A: Administration of Immovable Property Policy of the Overstrand Municipality:

The following paragraphs of the Administration of Immovable Property Policy are applicable:

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**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.”**

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”.**

The long-term lease of the Property which will be made available by means of a tender will follow a public participation process. Even though the lease with Pemzo will be for a short period until the tender is awarded the total lease period is still more than 3 years and therefore is classified as a long-term lease. Therefore, a request is made to Council to deviate from this paragraph. The request is that the agreement be renewed for a period of 8 (EIGHT) months or 1 (ONE) month after the tender is awarded, whichever one comes first.

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**Paragraph 20: “Long term lease of municipal immovable property with an income value less than R10 million:**

**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 subsequently approved that the right may be granted.”**

The Accounting Officer (Municipal Manager) approved in principle the short-term renewal of the lease of the Property to the Applicant for a period of 8 (EIGHT) months or 1 (ONE) month after the tender is awarded, whichever comes first, subject thereto that the approval of Council is obtained for the deviation from paragraphs 18 and 20.1(b) of the Administration of Immovable Property Policy.

A request is made to Council to deviate from paragraph 20.1(b) as the Property will only be leased for a short period and further as the tender for the long-term lease will be advertised.

The approval from the Executive Mayor for the renewal of the lease agreement is hereby requested subject to the mentioned deviations being approved by Council.

**Paragraph 24 “The fair market value for the alienation of, the rental amount for the leasing or compensation payable for a servitude over municipal immovable property shall be determined by an independent professional valuer or professional associated valuer registered in terms of the Property Valuers Profession Act, 2000 (Act 47 of 2000), or any ensuing act at the cost of the purchaser (in the case of a direct sale) or lessee (in the case of a direct lease)/servitude holder (in the case of a servitude).”**

The current rental is R23,959.70 (TWENTY THREE THOUSAND NINE HUNDRED AND FIFTY NINE RAND AND SEVENTY CENTS) (Excluding VAT) per month. The indicative market related rental was determined in October 2021 for the purpose of the tender at R15,780.00 (FIFTEEN THOUSAND SEVEN HUNDRED AND EIGHTY RAND) (VAT excluded) and therefore the current rental is more than the market related rental and is therefore acceptable.

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B: Advertisement/Notification

It is requested that a deviation from paragraph 20.1(b) of the Administration of Immovable Property Policy be approved in that an advert not be published for the temporary lease agreement.

**Conclusion**

Taking the above into consideration, it is recommended that:

- (a) The Executive Mayor approves the short-term renewal of the lease of the Property to Pemzo for a period of 8 (EIGHT) months or 1 (ONE) month after the award of the tender, whichever one comes first, at a rental amount of R23,959.70 (TWENTY THREE THOUSAND NINE HUNDRED AND FIFTY NINE RAND AND SEVENTY CENTS) (Excluding VAT) per month; and
- (b) Council approves the deviation from paragraph 18 of the Administration of Immovable Property Policy in order to renew the current lease agreement with Pemzo for a period of 8 (EIGHT) months or 1 (ONE) month after the award of the tender, whichever one comes first, without following a competitive process, and
- (c) Council approves the deviation from paragraph 20.1(b) of the Administration of Immovable Property Policy in order to renew the current lease agreement with Pemzo for a period of 8 (EIGHT) months or 1 (ONE) month after the award of the tender, whichever one comes first, without following a public participation process.

**7. Financial Implications**

The Municipality stands to gain a rental amount of R23,959.70 (TWENTY THREE THOUSAND NINE HUNDRED AND FIFTY NINE RAND AND SEVENTY CENTS) (Excluding VAT) per month as well as service charges.

**8. Staff Implications**

None

**9. Comments from other Departments, Divisions and Administrations**

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

*“As this application is dealt with in terms of the Administration of Immoveable Property Policy and it relates to a revenue generating project, with no intension of disposing of the asset, there is no objection to the application.”*

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**10. Annexures**

Annexure A: Locality Map

**RECOMMENDATION TO THE EXECUTIVE MAYOR:**

1. that the short-term renewal of the lease of Erf 9515 Zwelihle, ±1,280m<sup>2</sup> in extent, to Pemzo Construction CC for a period of 8 (EIGHT) months or 1 (ONE) month after the award of the tender, whichever one comes first, from 1 October 2021 for business purposes to manage, sub-lease, supervise and maintain the property, at a rental amount of R23,959.70 (TWENTY THREE THOUSAND NINE HUNDRED AND FIFTY NINE RAND AND SEVENTY CENTS) (Excluding VAT) per month, **be approved**; and
2. that the abovementioned approval be subject to Council approving the deviation from paragraphs 18 and 20.1(b) of the Administration of Immovable Property Policy of 2015.

**RECOMMENDATION TO THE COUNCIL:**

1. that the deviation from paragraph 18 of the Administration of Immovable Property Policy in order to renew for a short-term period the current lease agreement with Pemzo Construction CC for a period of 8 (EIGHT) months or 1 (ONE) month after the award of the tender, whichever one comes first, without following a competitive process, **be approved**; and
2. that the deviation from paragraph 20.1(b) of the Administration of Immovable Property Policy in order to renew for a short-term period the current lease agreement with Pemzo Construction CC for a period of 8 (EIGHT) months or 1 (ONE) month after the award of the tender, whichever one comes first, without following a public participation process, **be approved**.

<b>RESPONSIBLE OFFICIAL :</b>	<b>M ERASMUS</b>
<b>TARGET DATE FOR IMPLEMENTATION :</b>	<b>31 MARCH 2022</b>
<b>TARGET DATE TO INFORM APPLICANT :</b>	<b>15 MARCH 2022</b>
<b>TARGET DATE TO INFORM OBJECTOR :</b>	<b>N/A</b>

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7/2/3/1

A Le Roux

Manager: Property Administration

14 December 2021

(028) 316-5623

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**THIS MATTER SERVED BEFORE THE JOINT PORTFOLIO COMMITTEE ON 2 FEBRUARY 2022, WHICH COMMITTEE RECOMMENDED AS FOLLOWS:**

**RECOMMENDATION TO THE EXECUTIVE MAYOR:**

1. that the short-term renewal of the lease of Erf 9515 Zwelihle, ±1,280m<sup>2</sup> in extent, to Pemzo Construction CC for a period of 8 (EIGHT) months or 1 (ONE) month after the award of the tender, whichever one comes first, from 1 October 2021 for business purposes to manage, sub-lease, supervise and maintain the property, at a rental amount of R23,959.70 (TWENTY THREE THOUSAND NINE HUNDRED AND FIFTY NINE RAND AND SEVENTY CENTS) (Excluding VAT) per month, **be approved**; and
2. that the abovementioned approval be subject to Council approving the deviation from paragraphs 18 and 20.1(b) of the Administration of Immovable Property Policy of 2015.

**RECOMMENDATION TO THE COUNCIL:**

1. that the deviation from paragraph 18 of the Administration of Immovable Property Policy in order to renew for a short-term period the current lease agreement with Pemzo Construction CC for a period of 8 (EIGHT) months or 1 (ONE) month after the award of the tender, whichever one comes first, without following a competitive process, **be approved**; and
2. that the deviation from paragraph 20.1(b) of the Administration of Immovable Property Policy in order to renew for a short-term period the current lease agreement with Pemzo Construction CC for a period of 8 (EIGHT) months or 1 (ONE) month after the award of the tender, whichever one comes first, without following a public participation process, **be approved**.

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ANNEXURE A

