

**AGENDA of the  
Portfolio Committee : Investment & Infrastructure  
6 February 2023  
(Also the agenda for the Mayoral Committee Meeting : 14 February 2023)**

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4.

**ERF 2037 GANSBAAI SITUATED AT 22 CHRIS HANI CRESCENT, MASAKHANE, GANSBAAI: DEVIATION FROM PARAGRAPH 20.1(b) OF THE ADMINISTRATION OF IMMOVABLE PROPERTY POLICY OF 2015 ALLOWING THE MUNICIPALITY TO ENTER INTO A FURTHER LEASE AGREEMENT WITH TAKALANE BABY CARE**

**A Le Roux  
19 December 2022**

**Senior Manager: Property Administration**

**(028) 316 5623**

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**1. Executive Summary**

To obtain approval to enter into a further lease agreement with Takalane Baby Care, hereafter referred to as “Takalane”, in respect of municipal property, Erf 2037 Gansbaai (624m<sup>2</sup> in extent), situated at 22 Chris Hani Crescent, Masakhane, Gansbaai hereafter referred to as “the Property”, for a period of 12 (TWELVE) months for the purpose of operating the Takalane crèche and related activities, 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 direct lease agreement with Takalane in respect of the Property for the purpose of operating the Takalane crèche and related activities without following a public participation process.

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

Infrastructure and Planning  
Property Administration

**3. Compliance with Strategic Priority/ies**

Provision of democratic, accountable and ethical governance

**4. Delegated Authority**

Partly delegated to the 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**

Grootbos Green Future Foundation has been managing the Takalane crèche administratively for many years. In 2013 Takalane registered as a NPO to operate as a separate entity and was no longer being managed by Grootbos Green Future Foundation.

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

Although the process for the renewal of the agreement was commenced with timeously, the process could unfortunately not be completed before expiry of the last agreement as the Property Administration Department waited a long time for Takalane to confirm if they would like to renew the lease agreement.

It has come to the attention of the Property Administration Department that Takalane is currently not registered with the Department of Basic Education (ECD / Partial Care function moved from Department of Social Development to Department of Basic Education earlier in 2022) due to their finances not being in order, the building's compliance not being in good order, compliance for health is not in order, and the kitchen is also not compliant with health standards.

On 17 October 2022, the delegated authority approved in-principle the renewal of the lease for a further period, subject to the final approval of the Executive Mayor, Council's approval of deviation from paragraph 20.1 (b) and subject to the registration of the facility with the Department of Basic Education being completed and the compliance issues resolved within a period of 12 (TWELVE) months.

Should the renewal of the lease agreement be approved, a lease agreement will be entered into with Takalane for a period of 12 (TWELVE) months to enable them to complete the registration of the facility with the Department of Basic Education, to get their financial management in order and to resolve the compliance issues. The renewal date will be backdated to commence the day after expiry of the previous agreement. No complaints have been received from the community and the municipal account is paid up to date.

**Evaluation**

A. Administration of Immoveable Property Policy of the Overstrand Municipality

The following conditions of said policy apply:

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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”.**

As the Property is not classified as a business site and the leasing of the Property as a crèche is in the interest of the community, and they have been leasing it since 2013 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 Takalane without following a competitive process.

Although the proposed lease is for a long-term period (considering the previous lease periods) 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

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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 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.”**

Takalane applied for the renewal of the lease agreement which was approved in principle by the Municipal Manager on 17 October 2022 for a period of 12 (TWELVE) months, subject to the approval by the Executive Mayor as delegated authority of the long-term lease, Council's approval for deviation from paragraph 20.1 (b) and further subject to the completion of Takalane's registration process and compliance issues.

A request is made to Council to deviate from paragraph 20.1(b) as the Property will only be leased for a period of 12 (TWELVE) months until the registration process is completed and the compliance issues have been resolved.

The approval from the Executive Mayor for the renewal of the lease agreement is hereby requested subject to the above mentioned.

**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 December 2022 with a monthly rental amount of R167.84 (ONE

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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 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**

It is requested that a deviation from paragraph 20.1(b) of the Administration of Immoveable Property Policy be approved in that an advert not be published until the registration process have been completed and the compliance issues resolved.

**Conclusion**

With reference to the above discussion, it is recommended that the lease of the Property to Takalane be approved for a further period of 12 (TWELVE) months from 1 December 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 December 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 Takalane.

**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 property is zoned for community zone purposes that provides for day care as a primary right. Accordingly, no objection from a Town Planning point of view to the renewal of the lease, subject to compliance with the development parameters applicable in terms of the Land Use Scheme, 2020.”*

**Manager: Social Development - Mr G Smit**

*“Takalani has been assisted by a number of organisations over the years, yet they are still struggling.*

*Food4Thought who is currently appointed by the Department of Education (the Partial Care / Early Childhood Development function moved from the Department of Social Development to the Department of Basic Education earlier this year) reports that Takalani cannot get registered at this stage because their :*

- *finances are not in order,*
- *compliance for health is not in order,*
- *the buildings compliance is not in good order, and*
- *the kitchen is also not compliant with health standards.*

*We also need to take the following into consideration:*

- *The municipality leases this property out for a specific purpose i.e., as a partial care facility for the provision of ECD;*
- *Partial care facilities must be registered in terms of the Children’s Act; and*
- *Schedule 4 Part B of the Constitution of the Republic of South Africa determines that municipalities are responsible for the provision of childcare facilities.*

*We therefore need to ensure that the property we lease out must be fit for purpose or alternatively ensure that the organisation to who we lease it is would be able to bring to bring the facility up-to required standards.*

*Considering their ongoing challenges over years despite efforts to assist them, this department cannot support the recommendation. This department would recommend that a conditional registration be considered – i.e., on condition that:*

1. *the necessary maintenance be done to the building to ensure its compliance with environmental health requirements; and*
2. *Takalani NPO needs get their financial management in order;*
3. *This must be done within a six month period.*

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*We must keep in mind that 6 months is a short time but is 6 months too long for unregistered facility where children in a municipal building could be knowingly at risk of injury.*

*In the meantime, this department will investigate the possibility that the Takalani Staff can be trained as home based carers, which would ensure they can continue with work outside of the centre.”*

Comments from the Senior Manager: Property Administration: In order to ensure that the service is still delivered to the community and no children are left alone at home because the facility was forced to close down, it is recommended that the lease be renewed, not only for the Applicant to comply to all the conditions imposed, but also for the Municipality, with specific reference to the Manager: Social Development, to identify a more suitable lessee who will be able to take over the lease / enter into a lease agreement with the Municipality to ensure that this service to the community is not lost.

The Municipality must also investigate the possibility of assisting with getting the municipal asset (building) compliant in order for it to be used as a crèche, specifically if we can find a more suitable lessee / Takalane can get their affairs in order.

Lastly, it is proposed that the Manager: Social Development assist Takalane as far as possible to comply with the conditions imposed insofar the necessary registration required.

**Senior Manager: Expenditure & Assets– Mr. J Vorster - 028 313 8046**

*“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 2037 Gansbaai (624m<sup>2</sup> in extent), to Takalane Baby Care, for the purpose of operating the Takalane creché and related activities for a period of 12 (TWELVE) months at a rental amount of R167.84 (ONE HUNDRED AND SIXTY SEVEN RAND AND EIGHTY FOUR CENTS) (VAT excluded) per month from 1 December 2022 in terms of the Administration of Immovable Property Policy of the Overstrand Municipality, **be approved;**

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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 any further application for renewal be subject to the condition that Takalane complete the registration process of the facility with the Department of Basic Education, to stabilise their finances and to resolve the compliance issues within a period of 12 (TWELVE) months.

**RECOMMENDATION TO THE COUNCIL:**

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 Takalane Baby Care for a period of 12 (TWELVE) months without following a public participation process, **be approved**.

<b>RESPONSIBLE OFFICIAL :</b>	<b>R OCTOBER</b>
<b>TARGET DATE FOR IMPLEMENTATION :</b>	<b>15 MARCH 2023</b>
<b>TARGET DATE TO INFORM APPLICANT :</b>	<b>30 MARCH 2023</b>
<b>TARGET DATE TO INFORM OBJECTOR :</b>	<b>N/A</b>

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**A Le Roux**

**Senior Manager: Property Administration**

**19 December 2022**

**(028) 316 5623**

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**THIS MATTER SERVED BEFORE THE INVESTMENT & INFRASTRUCTURE PORTFOLIO COMMITTEE ON 6 FEBRUARY 2023, WHICH COMMITTEE RECOMMENDED AS FOLLOWS:**

**RECOMMENDATION:**

1. that the renewal of the lease of municipal property, being Erf 2037 Gansbaai (624m<sup>2</sup> in extent), to Takalane Baby Care, for the purpose of operating the Takalane creché and related activities for a period of 12 (TWELVE) months at a rental amount of R167.84 (ONE HUNDRED AND SIXTY SEVEN RAND AND EIGHTY FOUR CENTS) (VAT excluded) per month from 1 December 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 any further application for renewal be subject to the condition that Takalane complete the registration process of the facility with the Department of Basic Education, to stabilise their finances and to resolve the compliance issues within a period of 12 (TWELVE) months.

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**RESPONSIBLE OFFICIAL :**

**R OCTOBER**

**TARGET DATE FOR IMPLEMENTATION :**

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**30 MARCH 2023**

**TARGET DATE TO INFORM OBJECTOR :**

**N/A**



