

**AGENDA of the
Portfolio Committee: Infrastructure & Planning
18 May 2021
(Also the agenda for the Mayoral Committee Meeting: 26 May 2021)**

**3.
ERF 9212 HERMANUS (SITUATED AT 26 SIYAYA STREET, ZWELIHLE):
RENEWAL OF LEASE OF MUNICIPAL PROPERTY TO SIYAKHA COMMUNITY
EDUCARE CENTRE AND ENRICHMENT PROJECT**

7/2/3/1

A Le Roux

Manager: Property Administration

13 April 2021

(028) 316 - 5623

1. Executive Summary

To obtain approval to enter into a further lease agreement with Siyakha Educare Centre and Enrichment Project (hereinafter referred to as "Siyakha") in respect of municipal property, being Erf 9212 Hermanus (681m² in extent) situated at 26 Siyaya Street, Zwelihle (hereinafter referred to as "the Property"), for a period of 9 (NINE) years and 11 (ELEVEN) months for the purpose of managing an Early Childhood Development Centre and related purposes. See the locality plan attached hereto marked Annexure "A".

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
Creation and maintenance of a safe and healthy environment
Promotion of tourism, economic and social development

4. Delegated Authority

Executive Mayor

5. Legal Requirements

- Municipal Asset Transfer Regulations (R. 878 of 2008)
- Administration of Immovable Property Policy of the Overstrand Municipality (2015)

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6. Background/Discussion/Evaluation/Conclusion

Background/Discussion

Siyakha is a registered Non-Profit Organisation under registration number NPO 084-293 and has been successfully using the Property for the past 13 (THIRTEEN) years for the purpose of an Early Childhood Development Centre. The last lease agreement commenced on 1 May 2018 and expired on 30 April 2021. The renewal process was commenced with on time, but due to arrear accounts of Siyakha which had to be dealt with, the process could not be finalised before expiry of the lease agreement.

Siyakha applied for the renewal of the agreement and the renewal was approved in principle by the Municipal Manager on 9 February 2021 for a period of 9 (NINE) years and 11 (ELEVEN) months.

Siyakha is being levied the monthly rental amount as they are still occupying the Property.

In 2018 the Manager: Social Development, Economic Development and Tourism, Mr Gerhard Smit, provided the following comment with regards to long term lease renewals of ECD centres:

“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 have to undergo a thorough public participation process to ensure buy in from the community, it will therefore take some time but hopefully not more than two years.”

It was requested that should renewals be approved, it should only be for a further period of 3 (THREE) years, giving the Directorate: Social Development and Economic Development and Tourism the needed time to compile and implement the above-mentioned policy. Up to date (since 2018) no feedback has been provided as to the status of the policy or when it will be finalised for approval and implementation. After discussion with the Manager: Property Administration, Ms Anja Le Roux, it has been recommended and subsequently approved in principle by the Municipal Manager that, should the renewal of the lease agreement be recommended, the renewal period be for a period of 9 (NINE) years and 11 (ELEVEN) months as the financial implications towards the publishing of the advert every 3 (THREE) years with respect to the public participation process will be too great for any ECD to bear and place an enormous strain on their finances.

Siyakha delivers an essential service to the community through various services they offer to children and no complaints have been received from the

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public during their previous lease periods. As on date hereof, their municipal account is paid to date.

Evaluation

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

The following conditions of the said Policy will 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.”

The application for renewal was received before the expiry of the last agreement and therefor no formal application form needs 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”.

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Although the proposed lease is for a long term period the rental that will be received will not be in excess of R10 million as the rental charged will be in accordance with the tariffs approved in the Annual Budget for lease of municipal land to NPO's for the specific financial year. Currently the rental amount is R154.78 (ONE HUNDRED AND FIFTY-FOUR RAND AND SEVENTY-EIGHT CENTS) (VAT excluded).

An application for Consent use on the Property was approved to operate an ECD on the Property and thus it may not be used as a formal business premises.

Siyakha delivers an important service to the community and has been leasing the property successfully for the past 13 (THIRTEEN) years without any complaints from the community. A competitive process will not be in the best interest of the community as the service of educating the children of the community is very important and as the financial implication to make the Property available via a competitive bidding process will be more than that of the rental amount received.

As Siyakha is a registered NPO that utilises the Property and manages an ECD, it can be argued that the Property be leased directly to Siyakha without following a competitive process as the ECD is a community based facility that delivers a very important service to the community which operates not to gain profit.

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 further lease of the Property to the Applicant, subject to a public participation process being followed and further subject to the approval by the Executive Mayor as delegated authority of the long term lease.

The proposed lease was advertised in The Village News on 17 March 2021 for a 30 (THIRTY) day comment/objection period.

Paragraph 26: “In cases where a rental amount has been approved in the annual budget of the Municipality for certain types

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of leases and encroachments, the approved amount will be used for purposes of determining the rental amount.”

The tariff for lease of municipal property to registered Social Care Institutions/Organisations/NPO's/PBO's/Sport facilities is R154.78 (ONE HUNDRED AND FIFTY-FOUR RAND AND SEVENTY-EIGHT CENTS) (VAT excluded) per month for the 2020/2021 financial year. 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.”

Siyakha 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 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 the Property was placed in The Village News on 17 March 2021 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 of the Property to Siyakha be approved for a further period of 9 (NINE) years and 11 (ELEVEN) months from 1 May 2021 at a rental amount of R154.78 (ONE HUNDRED AND FIFTY-FOUR RAND AND SEVENTY-EIGHT CENTS) (VAT excluded) per month for the 2020/2021 financial year.

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7. Financial Implications

The Municipality stands to gain rental in the amount of R154.78 (ONE HUNDRED AND FIFTY-FOUR RAND AND SEVENTY-EIGHT CENTS) (VAT excluded) per month from 1 May 2021 where after the rental 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 will be 1 July 2021. All expenses pertaining to the proposed lease will be borne by Siyakha.

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

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

The comment of the Manager: Social Development was requested but was unfortunately not yet received on date of this report.

Town Planner: Mr H Boshoff – (028) 313 8900

“An application for a consent use was approved on the property to utilize the property as a place of instruction (crèche). The rights are therefore in place and no further comment is offered.”

Senior Manager: Hermanus Administration: Mr A Wyngaard – (028) 313 8112

“I have no objections.”

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(s), there is no objection to the report.”

10. Annexures

Annexure A: Locality Map

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RECOMMENDATION:

1. that the lease of municipal property, being Erf 9212 Hermanus (681m² in extent), to Siyakha Community Educare Centre and Enrichment Project, for managing an Early Childhood Development Centre at a rental amount R154.78 (ONE HUNDRED AND FIFTY-FOUR RAND AND SEVENTY-EIGHT CENTS) (VAT excluded) per month for a period of 9 (NINE) years and 11 (ELEVEN) months from 1 May 2021 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 annually on 1 July in accordance with the tariffs stipulated in the Annual Budget as approved by Council.

RESPONSIBLE OFFICIAL:	R OCTOBER
TARGET DATE FOR IMPLEMENTATION:	30 JUNE 2021
TARGET DATE TO INFORM APPLICANT:	16 JUNE 2021
TARGET DATE TO INFORM OBJECTOR:	N/A

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7/2/3/1

A Le Roux

13 April 2021

Manager: Property Administration

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**THIS MATTER SERVED BEFORE THE JOINT PORTFOLIO COMMITTEE ON
18 MAY 2021, WHICH COMMITTEE SUPPORTED THE RECOMMENDATION**

RESPONSIBLE OFFICIAL:

R OCTOBER

TARGET DATE FOR IMPLEMENTATION:

30 JUNE 2021

TARGET DATE TO INFORM APPLICANT:

16 JUNE 2021

TARGET DATE TO INFORM OBJECTOR:

N/A



Erf 9212 ZWELIHLE