

**AGENDA of the
Portfolio Committee : Infrastructure & Planning
20 November 2018
(Also the agenda for the Mayoral Committee Meeting : 28 November 2018)**

2.

HERMANUS, ERF 9515 ZWELIHLE: DEVIATION FROM PARAGRAPHS 18 AND 24 OF THE ADMINISTRATION OF IMMOVABLE PROPERTY POLICY OF 2015 ALLOWING THE MUNICIPALITY TO ENTER INTO A FURTHER LEASE AGREEMENT WITH PEMZO CONTRUCTION CC

7/2/3/1

M Erasmus
9 October 2018

(028) 316-3724

Hermanus Administration

1. Executive Summary

To obtain approval from the Executive Mayor to enter into a further lease agreement with Pemzo Construction CC in respect of Erf 9515 Zwelihle for the purpose of the management, leasing, sub-letting, supervising and maintaining of the property for business purposes; and

To obtain approval from Council for the deviation from paragraph 18 and 24 of the Administration of Immovable Property Policy of 2015 allowing the Municipality to enter into a further lease agreement with Pemzo Construction CC in respect of Erf 9515 Zwelihle for the purpose of the management, leasing, sub-letting, supervising and maintaining of the property for business purposes without following a competitive 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.

5. Legal Requirements

- Administration of Immovable Property Policy of the Overstrand Municipality (2015)

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6. Background/Discussion/Evaluation/Conclusion

Background

A tender was advertised in 2015 inviting interested parties to tender for the lease of Erf 9515 Zwelihle for business purposes and the tender was subsequently awarded to Pemzo Construction CC on 28 August 2015 where after a lease agreement was entered into for a period of 3 years. The lease agreement was for the period 1 October 2015 to 30 September 2018.

Discussion

Pemzo Construction CC applied for the renewal of the lease agreement.

Clause 1.2 of the lease agreement stipulates as follows:

*“The **LESSOR** may consider an extension of the lease agreement provided that:*

- (a) The **LESSEE** is not in arrears with payment of the municipal account;*
- (b) The **LESSEE** is not in default in terms of this agreement in any way;*
- (c) The **LESSEE** has applied for a renewal at least 6 months before expiry of this agreement;*
- (d) The intent to extend the lease period is advertised at the cost of the **LESSEE** (public participation); and*
- (e) The **LESSOR**, after the public participation process, through its delegated authority, approved the extended period.”*

Regarding the above conditions the following:

- (a) Pemzo’s municipal account is paid to date and is not in arrears;
- (b) Pemzo is not in default in terms of the agreement;
- (c) Discussions regarding the application for renewal were commenced with in time. During the riots experienced in Zwelihle during 2018 the leased building was however vandalised and the extent thereof and the effect it had on the lease was evaluated first before formal written confirmation was received for the renewal application;
- (d) Pemzo Construction CC confirmed that they will pay for the advertisement costs; and
- (e) It is proposed that the further lease agreement be approved and a lease agreement be entered into subject to the public participation process being followed and no objections being received.

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Pemzo have faced many challenges during their lease period including the initial work done by themselves due to vandalism just before the commencement of the lease agreement as well as the vandalism during the period of riots in Zwelihle where they were again not able to trade. During all these challenges Pemzo have paid their rental and other services and have proven that they can successfully manage the property and sub-lessees thereon. It is in light of the above that the renewal of the lease agreement for another 3 (THREE) year period is recommended.

During the riots there were rooms vandalised to such an extent that there were some of the rooms that could not be used for trading and the rental amount was subsequently proportionally decreased. Pemzo Construction CC has started to repair some of the rooms at their own cost. There are currently only 2 rooms that they cannot use for trading which forms part of the insurance claim of the Municipality. It is thus proposed that the rental amount of R22,015.69 (VAT excluded) continue to be levied until such time as the 2 rooms are repaired after which the full rental in the amount of R25,684.98 (VAT excluded) will be charged. The rental amount will escalate on 1 July 2019.

The rental amount will continue to be levied on the municipal account as Pemzo Construction CC is still in occupation of the property.

Evaluation

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

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

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18.4 by discretion of the municipality, a competitive process will best serve the interests of the community.”

In this case a direct lease is proposed with a deviation from paragraph 18 in that a competitive process not be followed as the lease agreement made provision for the extension of the lease agreement at the discretion of the Municipality and further as Pemzo Construction CC have proven that they can successfully manage the lease and sub-lessees on the property.

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 further lease of Erf 9515 Zwelihle to Pemzo Construction CC subject thereto that the approval of Council is obtained as to the deviation from paragraphs 18 and 24 of the Policy as requested in this report and further subject to a public participation process being followed. An in principle approval for a 3 (THREE) year period was obtained.

In this case, seeing that Pemzo Construction CC has already had an agreement for 3 years, a further short term lease in respect of Erf 9515 Zwelihle will cause the said total lease period to be in excess of three years, which is not permissible in terms of Paragraph 20 of the Policy if a public participation process is not followed. Should Council approve the deviation of paragraphs 18 and 24 and the Executive Mayor approve the further lease, a public participation process will be followed. Should valid objections be received during the public participation process, the matter will be referred back to the Executive Mayor.

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*

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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 lease amount is R25,684.98 (TWENTY FIVE THOUSAND SIX HUNDRED AND EIGHTY FOUR RAND AND NINETY EIGHT CENTS) (VAT excluded) per month with a lowered proportional rental of R22,015.69 (TWENTY TWO THOUSAND AND FIFTEEN RAND AND SIXTY NINE CENTS) (VAT excluded) due to the vandalised rooms. This current lease amount is the escalated amount of the tendered amount, as was offered by Pemzo Construction CC when the tender was initially awarded.

It is proposed that the rental amount in the renewal agreement be determined at a rental amount of R22,015.69 (VAT excluded) until such time as the 2 rooms are repaired after which the full rental in the amount of R25,684.98 (VAT excluded) will be levied.

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 will be included in the lease agreement entered into with Pemzo Construction CC.

Conclusion

Taking the above into consideration, it is recommended that:

- (a) The Executive Mayor approves the renewal of the lease of Erf 9515 Zwelihle to Pemzo Construction CC for a period of 3 (THREE) years from 1 October 2018 for the purpose of the management, leasing, sub-letting, supervising and maintaining of the property for business purposes at the rental amount of R22,015.69 (VAT excluded) until such time as the 2 rooms are repaired after which the full rental in the amount of R25,684.98 (VAT excluded) will be levied per month, subject to a public participation process being followed; and
- (b) Council approves the deviation from paragraphs 18 and 24 of the Administration of Immovable Property Policy of 2015.

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7. Financial Implications

The Municipality stands to gain a rental amount of R22,015.69 (VAT excluded) per month until such time as the 2 rooms are repaired after which the full rental in the amount of R25,684.98 (VAT excluded) will be levied. The said rental amount will escalate annually on the 1st of July by a percentage equal to the consumer price index.

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 is an income generating proposal with no intention to dispose of the asset, there is no objection to the report.

10. Annexures

Annexure A: Locality Map

RECOMMENDATION TO THE EXECUTIVE MAYOR:

1. that the renewal of the lease of municipal property, being Erf 9515 Zwelihle, to Pemzo Construction CC for the purpose of the management, leasing, sub-letting, supervising and maintaining of the property for business purposes for a period of 3 (THREE) years from 1 October 2018 at the monthly rental amount of R22,015.69 (TWENTY TWO THOUSAND AND FIFTEEN RAND AND SIXTY NINE CENTS) (VAT excluded) until such time as the 2 rooms are repaired after which the full rental in the amount of R25,684.98 (TWENTY FIVE THOUSAND SIX HUNDRED AND EIGHTY FOUR RAND AND NINETY EIGHT CENTS) (VAT excluded) will be levied per month in terms of the Administration of Immovable Property Policy of the Overstrand Municipality, **be approved;**
2. that the abovementioned approval be subject to:
 - (a) Council approving a deviation from paragraphs 18 and 24 of the Administration of Immovable Property Policy of 2015;
 - (b) a public participation process being followed; and
 - (c) if any objections to the renewal of the lease agreement are received, the matter be referred back to the Executive Mayor for consideration.

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RECOMMENDATION TO THE COUNCIL:

1. that the deviation from paragraph 18 of the Administration of Immovable Property Policy in order to renew the current lease agreement with Pemzo Construction CC for a further period of 3 (THREE) years without following a competitive process, **be approved;** and
2. that the deviation from paragraph 24 of the Administration of Immovable Property Policy in order to renew the current lease agreement with Pemzo Construction CC without having a new market related valuation being done, **be approved.**

RESPONSIBLE OFFICIAL :

M ERASMUS

TARGET DATE FOR IMPLEMENTATION :

31 DECEMBER 2018

TARGET DATE TO INFORM APPLICANT :

17 DECEMBER 2018

TARGET DATE TO INFORM OBJECTOR :

N/A

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7/2/3/1

M Erasmus
9 October 2018

(028) 316-3724

Hermanus Administration

THIS MATTER SERVED BEFORE THE JOINT PORTFOLIO COMMITTEE ON 20 NOVEMBER 2018, WHICH COMMITTEE RECOMMENDED AS FOLLOWS:

RECOMMENDATION TO THE EXECUTIVE MAYOR:

1. that the renewal of the lease of municipal property, being Erf 9515 Zwelihle, to Pemzo Construction CC for the purpose of the management, leasing, sub-letting, supervising and maintaining of the property for business purposes for a period of 3 (THREE) years from 1 October 2018 at the monthly rental amount of R22,015.69 (TWENTY TWO THOUSAND AND FIFTEEN RAND AND SIXTY NINE CENTS) (VAT excluded) until such time as the 2 rooms are repaired after which the full rental in the amount of R25,684.98 (TWENTY FIVE THOUSAND SIX HUNDRED AND EIGHTY FOUR RAND AND NINETY EIGHT CENTS) (VAT excluded) will be levied per month in terms of the Administration of Immovable Property Policy of the Overstrand Municipality, **be approved**;
2. that the abovementioned approval be subject to:
 - (a) Council approving a deviation from paragraphs 18 and 24 of the Administration of Immovable Property Policy of 2015;
 - (b) a public participation process being followed; and
 - (c) if any objections to the renewal of the lease agreement are received, the matter be referred back to the Executive Mayor for consideration.

RECOMMENDATION TO THE COUNCIL:

1. that the deviation from paragraph 18 of the Administration of Immovable Property Policy in order to renew the current lease agreement with Pemzo Construction CC for a further period of 3 (THREE) years without following a competitive process, **be approved**; and
2. that the deviation from paragraph 24 of the Administration of Immovable Property Policy in order to renew the current lease agreement with Pemzo Construction CC without having a new market related valuation being done, **be approved**.

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