

**AGENDA of the
Portfolio Committee : Infrastructure & Planning
19 October 2021
(Also the agenda for the Mayoral Committee Meeting : 28 October 2021)**

18.

A PORTION OF ERF 775 FISHERHAVEN: 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 LAKE MARINA YACHT AND BOAT CLUB

7/2/3/1

R Marinus

Acting Manager: Property Administration

13 September 2021

(028) 316-5609

1. Executive Summary

To obtain approval from the Executive Mayor to enter into a further lease agreement with Lake Marina Yacht and Boat Club (hereinafter referred to as "LMYBC") in respect of a portion of Erf 775 Fisherhaven ($\pm 7,420\text{m}^2$ in extent) (hereinafter referred to the "Property") situated in Riverside Drive for a period of 3 (THREE) years for the purpose of performing activities as a yacht club and operating 39 caravan sites for its members; and

To obtain approval from Council for the 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 LMYBC in respect of a portion of Erf 775 Fisherhaven for the purpose of performing activities as a yacht club and operating 39 caravan sites for its members without following a competitive bidding 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

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

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6. Background/Discussion/Evaluation/Conclusion

LMYBC was formed as a Voluntary Association and has been managing the facilities since August 1977 of which the lease agreement expired on 30 June 2017. It was decided that the Property must be made available for development through a competitive bidding process. As the investigation and planning regarding the development was still in process, short term lease agreements were entered into with LMYBC, for the following respective periods, 1 July 2017 to 31 December 2018 and 1 January 2019 to 30 June 2020. The last short term lease agreement was for the period of 1 July 2020 to 30 June 2021 for the reasons set out below.

During the lease period of the short term lease for the period of 1 January 2019 to 30 June 2020, the process for the competitive bidding process was commenced with timeously and the tender document was compiled. Unfortunately, due to the lockdown instituted by the President, no tender specification meetings could be held as initially planned, with the result that the first available tender specification meeting could be on 15 April 2020. This had the effect that the evaluation of the tender would not be finalized by 30 June 2020 when the short term lease for the period of 1 January 2019 to 30 June 2020 would expire. As the competitive bidding process was still in process and as the Property could not remain unoccupied for any period due to the risk of vandalism and further as the cost of a tender for a short-term lease of the Property would not be cost effective, a short term direct lease to LMYBC was approved for the period of 1 July 2020 to 30 June 2021, allowing the Municipality to complete the necessary processes.

The necessary tender processes were followed and completed. Unfortunately, all the bids received in respect of the Property were deemed non-responsive. The tender was cancelled by a Bid Adjudication Committee meeting held on 28 August 2020.

Following the non-responsiveness of the tenders, a meeting was called with various stakeholders to discuss the path forward. The meeting was held on 25 November 2021. At the meeting various issues relating to the Property were discussed, including issues with LMYBC's use of the Property and the tender call's non-responsiveness. It was agreed by the parties at the meeting that the best way forward in the circumstances is leasing the Property to LMYBC for a further 3 (THREE) years from 1 July 2021 to allow for market conditions to change and to amend the tender document where necessary to attract more suitable and viable tenders/proposals.

A lease agreement was in the meantime entered into (for administrative and audit purposes) with special conditions included in the agreement stipulating that it is subject to the required public participation process and the Executive Mayor's approval (as delegated authority) allowing the Municipality to enter

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into a further lease period of 3 (THREE) years as well as subject to Council's approval of the deviations. The lease agreement is furthermore subject to special conditions that arose from the meeting between the stakeholders, such as a requirement that the slipway on the Property be made available to the public against payment of a reasonable fee.

Evaluation

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

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

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

As discussed, it has been planned that tenders will be invited for development proposals for the long term lease of the Property in due course. For purposes of the tender more public participation is necessary and will be conducted and furthermore time must be allowed for the relevant market and economy to recover from the effects of Covid-19 in particular. As the first call for tenders only produced non responsive bidders, it will be preferable that enough time is provided for a long term development tender to be produced. Having a vacant property leads to vandalism and the Property falling into disrepair and therefore a direct short term lease with a deviation from paragraph 18 that a competitive process not be followed, is proposed in this case as this will ensure that the Property is occupied, maintained and protected.

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Taking the discussions and future planning into account, a direct short term lease at this stage will best serve the interests of the community

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 lease of the Property to LMYBC 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. An in principle approval for a further 3 (THREE) years was obtained.

The proposed renewal of the lease was advertised in the Village News on 25 August 2021 for a 30 (THIRTY) day objection/comment period.

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 rental payable by LMYBC for the lease of the Property for the period of 1 July 2020 until 30 June 2021 was R32 457.24. (THIRTY TWO THOUSAND FOUR HUNDRED AND FIFTY SEVEN RAND AND TWENTY FOUR CENTS) (VAT Excluded) per annum. This rental amount was calculated using a 10% escalation from the previous lease agreement. It is proposed that the rental amount be escalated by 10% again to an amount of R35 702.97 (THIRTY FIVE THOUSAND SEVEN HUNDRED AND TWO RAND AND NINETY SEVEN CENTS) (VAT excluded) per annum, escalating at 10% each year of the lease period.

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As LMYBC is entering its final lease period of the Property after a long period of maintaining it and it is beneficial to the community and the municipality that the LMYBC continues to maintain the Property and pay the rates and taxes in respect of the Property, a deviation from Paragraph 24 is recommended.

B: Advertisement/Notification

An advertisement for the lease of the Property was published in The Village News on 25 August 2021 for a 30 (THIRTY) day objection/comment period. No objection was received.

Conclusion

Taking the above into consideration, it is recommended that:

- (a) The Executive Mayor approves the renewal of the lease of a portion of Erf 775 Fisherhaven to Lake Marina Yacht and Boat Club ($\pm 14,200\text{m}^2$ in extent), for a period of 3 (THREE) years from 1 July 2021 to 30 June 2024 for the purpose of performing activities as a yacht club and operating 39 caravan sites for members, at a rental amount of R35 702.97 (THIRTY FIVE THOUSAND SEVEN HUNDRED AND TWO RAND AND NINETY SEVEN CENTS) (VAT excluded) per annum, escalating at 10% each year of the lease period; and
- (b) Council approves the deviation from paragraphs 18 and 24 of the Administration of Immoveable Property Policy in order to renew the current lease agreement with Lake Marina Yacht and Boat Club for a further period of 3 (THREE) years without following a competitive process.

7. Financial Implications

The Municipality stands to gain a rental amount of R35 702.97 (THIRTY FIVE THOUSAND SEVEN HUNDRED AND TWO RAND AND NINETY SEVEN CENTS) (VAT excluded) per annum, escalating at 10% each year of the lease period.

8. Staff Implications

None

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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 of selling the asset, there is no objection against the application.”

10. Annexures

Annexure A: Locality Map

RECOMMENDATION TO THE EXECUTIVE MAYOR:

1. that the renewal of the lease of a portion of Erf 775 Fisherhaven ($\pm 14,200\text{m}^2$ in extent), to Lake Marina Yacht and Boat Club for a period of 3 (THREE) years from 1 July 2021 to 30 June 2024 for the purpose of performing activities as a yacht club and operating 39 caravan sites for members, at a rental amount of R35 702.97 (THIRTY FIVE THOUSAND SEVEN HUNDRED AND TWO RAND AND NINETY SEVEN CENTS) (VAT excluded) per annum, escalating at 10% each year of the lease period, **be approved**; and
2. that the abovementioned approval be subject to Council approving a deviation from paragraphs 18 and 24 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 the current lease agreement with Lake Marina Yacht and Boat Club 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 Lake Marina Yacht and Boat Club without having a new market related valuation being done, **be approved**.

RESPONSIBLE OFFICIAL :	R MARINUS
TARGET DATE FOR IMPLEMENTATION :	30 NOVEMBER 2021
TARGET DATE TO INFORM APPLICANT :	15 NOVEMBER 2021
TARGET DATE TO INFORM OBJECTOR :	N/A

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7/2/3/1

R Marinus

Acting Manager: Property Administration

13 September 2021

(028) 316-5609

THIS MATTER SERVED BEFORE THE JOINT PORTFOLIO COMMITTEE ON 19 OCTOBER 2021, WHICH COMMITTEE RECOMMENDED AS FOLLOWS:

RECOMMENDATION TO THE EXECUTIVE MAYOR:

1. that the renewal of the lease of a portion of Erf 775 Fisherhaven ($\pm 14,200\text{m}^2$ in extent), to Lake Marina Yacht and Boat Club for a period of 3 (THREE) years from 1 July 2021 to 30 June 2024 for the purpose of performing activities as a yacht club and operating 39 caravan sites for members, at a rental amount of R35 702.97 (THIRTY FIVE THOUSAND SEVEN HUNDRED AND TWO RAND AND NINETY SEVEN CENTS) (VAT excluded) per annum, escalating at 10% each year of the lease period, **be approved**; and
2. that the abovementioned approval be subject to Council approving a deviation from paragraphs 18 and 24 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 the current lease agreement with Lake Marina Yacht and Boat Club 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 Lake Marina Yacht and Boat Club without having a new market related valuation being done, **be approved**.

RESPONSIBLE OFFICIAL :

R MARINUS

TARGET DATE FOR IMPLEMENTATION :

30 NOVEMBER 2021

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N/A

