

**AGENDA of the
Portfolio Committee: Infrastructure & Planning
16 April 2019
(Also the agenda for the Mayoral Committee Meeting: 24 April 2019)**

**2.
GANSBAAI: TWO PORTIONS OF ERF 2020, GANSBAAI, SITUATED IN
MASAKHANE: RENEWAL OF LEASE OF MUNICIPAL PROPERTY TO
HERMANUS RAINBOW TRUST**

7/2/3/1

W Murtz

(028) 316-3724

Hermanus Administration

18 March 2019

1. Executive Summary

To obtain approval to enter into a further lease agreement with Hermanus Rainbow Trust for a period of 6 (SIX) years in respect of municipal property, being two portions of Erf 2020 Gansbaai, situated in Thandabuntu Street, Masakhane, specifically two rooms (cumulatively ±48m² in extent) and an ablution facility (±25m² in extent), for the purpose of a “Parenting Worx” programme, Early Childhood Development Training sessions, “Children’s Circle of Support” programme, Soup Kitchen and an HIV programme.

2. Service Delivery and Budget Implementation Plan - IGNITE

Infrastructure and Planning;
Property Administration

3. Compliance with Strategic Priority

Provision of democratic, accountable and ethical governance

4. Delegated Authority

Executive Mayor

5. Legal Requirements

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

6. Background/Discussion/Evaluation/Conclusion

Background

Hermanus Rainbow Trust has been utilising a portion of Erf 2020 Gansbaai, situated in Masakhane, for many years although a formal lease agreement was only entered into from 1 November 2013 for the purpose of a “Parenting Worx” programme, Early Childhood Development training sessions,

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“Children’s Circle of Support” programme, Soup Kitchen and an HIV programme.

The last agreement was for a period of 2 (TWO) years which expired on 31 October 2016.

The locality and layout of the proposed lease area are indicated on the locality plan attached per “Annexure A”.

Discussion

Hermanus Rainbow Trust applied for a further lease agreement of 6 (SIX) years from 1 November 2016.

The Chairperson of the Hermanus Rainbow Trust fell extremely ill and had to undergo various treatments. It was during this period that a reminder was sent to the Chairperson and the lease agreement expired. Unfortunately, due to the mentioned illness and treatments, the chairperson could not respond to the said correspondence and subsequently the Hermanus Rainbow Trust did not apply for renewal before expiration of the lease agreement. Further delays were caused in the application process due to an acting chairperson needing to be elected; new resolutions needed to be compiled and other internal processes within the Hermanus Rainbow Trust had to be dealt with.

Should the renewal of the lease agreement be approved the commencement date will be backdated to commence the day after expiry of the previous agreement, being 1 November 2016, and the rental will also be levied backdated as they had occupation of the property for the period.

Evaluation

A. Administration of Immovable Property Policy of the Overstrand Municipality

The following conditions of said policy apply:

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.”

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As the property is not classified as a business site and the leasing of the said property to Hermanus Rainbow Trust (a registered non-profit organisation) is in the interest of the community, i.e. not a commercial lease, and they have been leasing it successfully for several years and due to the nature of the lease and benefit to the community, it can be leased directly to Hermanus Rainbow Trust without following a competitive process.

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 lease of the two portions of Erf 2020 Gansbaai, situated in Masakhane, to Hermanus Rainbow Trust for the purpose of “Parenting Worx”, Early Childhood Development Training sessions, “Children’s Circle of Support” programme, Soup Kitchen and an HIV programme on condition that the public participation process is followed. The proposed lease were advertised in the Gansbaai Courant on 28 February 2019 for a 30 (THIRTY) day comment/objection period. No objections/comments were received.

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 rental amounts for social care organisations have only been approved as a tariff in the Annual Budget of the Municipality for the first time in the 2017/2018 financial year with the rental amounts approved being:

- a) In the 2017/2018 financial year the amount of R131.58 (ONE HUNDRED AND THIRTY ONE RAND AND FIFTY EIGHT CENTS)(VAT excluded) per month; and
- b) In the 2018/2019 financial year the amount of R140.00 (ONE HUNDRED AND FORTY RAND)(VAT excluded) per month.

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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.”

Hermanus Rainbow Trust will pay 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 two portions of Erf 2020 Gansbaai situated in Thandabuntu Street, Masakhane, were placed in the Gansbaai Courant on 28 February 2019 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 agreement with Hermanus Rainbow Trust be approved for a further 6 (SIX) years from 1 November 2016 at the following rental amounts:

- c) R127.53 (ONE HUNDRED AND TWENTY SEVEN RAND AND FIFTY THREE CENTS) (VAT excluded) per month for the period from 1 November 2016 to 30 June 2017 which is the amount other non-profit organisations paid in the 2016/2017 financial year;
- d) R131.58 (ONE HUNDRED AND THIRTY ONE RAND AND FIFTY EIGHT CENTS) (VAT excluded) per month for the period from 1 July 2017 to 30 June 2018 which was the amount approved in the 2017/2018 Annual Budget, and

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- e) R140.00 (ONE HUNDRED AND FORTY RAND) (VAT excluded) per month for the period 1 July 2018 to 30 June 2019 which is the amount approved in the 2018/2019 Annual Budget, where after the lease amount will escalate every year on the 1st of July in accordance with the tariffs stipulated in the Annual Budget as approved by Council.

7. Financial Implications

The Municipality stands to gain rental as follows:

- a) R127.53 (ONE HUNDRED AND TWENTY SEVEN RAND AND FIFTY THREE CENTS) (VAT excluded) per month for the period from 1 November 2016 to 30 June 2017 which is the amount other non-profit organisations paid in the 2016/2017 financial year;
- b) R131.58 (ONE HUNDRED AND THIRTY ONE RAND AND FIFTY EIGHT CENTS) (VAT excluded) per month for the period from 1 July 2017 to 30 June 2018 which was the amount approved in the 2017/2018 Annual Budget, and
- c) R140.00 (ONE HUNDRED AND FORTY RAND) (VAT excluded) per month for the period 1 July 2018 to 30 June 2019 which is the amount approved in the 2018/2019 Annual Budget, where after the lease amount will escalate every year on the 1st of 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 Hermanus Rainbow Trust.

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

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

"I have no objections to the application / request for renewal.

However, it is unclear exactly what service is being rendered. In terms of the Children's Act: a partial care is provided when a person, whether for or without reward, takes care of more than six children on behalf of their parents or care-givers during specific hours of the day or night, or for a temporary period, by agreement between the parents or the care-givers and the provider of the service, but excludes the care of a child.

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Whenever this definition is applicable - the partial care facility must register as either an Early Childhood Development service; after school service; private hostel; or a temporary respite care service. The services that Rainbow Trust provide to parents is not of concern but rather the 'Children's Circle of Support programme'.

Unless the parents accommodate the children on this programme, the programme might in likelihood have to register as a after school service, which, in terms of the Act, means the provision of meals, homework support, sporting activity support, life skills education and guidance and counselling support.

The Children Act's intention is to protect the rights of children - where it is clear that a municipal facility will be used to provide services to children - we have to ensure that the service provider complies with the legislative requirements in doing so."

Reply from Property Administration: the comments and concerns raised by Mr Smit will be communicated to the Hermanus Rainbow Trust and incorporated into the lease agreement where applicable.

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 Masakhane, with no intention to dispose of the asset, there is no objection to the report.

10. Annexures

Annexure A: Locality Plan

RECOMMENDATION:

1. that the lease of municipal property, being two portions of Erf 2020 Gansbaai, situated in Masakhane, more specifically two rooms ($\pm 48\text{m}^2$ in extent) and an ablution facility ($\pm 25\text{m}^2$ in extent), to Hermanus Rainbow Trust for the purpose of a "Parenting Worx" programme, Early Childhood Development Training sessions, "Children's Circle of Support" programme, Soup Kitchen and an HIV programme for a period of 6 (SIX) years, as from 1 November 2016, in terms of the Administration of Immovable Property Policy of the Overstrand Municipality at the following rental amounts, **be approved:**
 - (a) R127.53 (ONE HUNDRED AND TWENTY SEVEN RAND AND FIFTY THREE CENTS)(VAT excluded) per month for the period from 1 November 2016 to 30 June 2017 which is the amount other non-profit organisations paid in the 2016/2017 financial year;

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- (b) R131.58 (ONE HUNDRED AND THIRTY ONE RAND AND FIFTY EIGHT CENTS)(VAT excluded) per month for the period from 1 July 2017 to 30 June 2018 which was the amount approved in the 2017/2018 Annual Budget; and
- (c) R140.00 (ONE HUNDRED AND FORTY RAND)(VAT excluded) per month for the period 1 July 2018 to 30 June 2019 which is the amount approved in the 2018/2019 Annual Budget.
2. that the rental amount mentioned in 1 above be escalated every year on the 1st of July in accordance with the tariffs stipulated in the Annual Budget as approved by Council, the next escalation to be on 1 July 2019.

RESPONSIBLE OFFICIAL:	W MURTZ
TARGET DATE FOR IMPLEMENTATION:	31 MAY 2019
TARGET DATE TO INFORM APPLICANT:	10 MAY 2019
TARGET DATE TO INFORM OBJECTOR:	N/A

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**GANSBAAI: TWO PORTIONS OF ERF 2020, GANSBAAI, SITUATED IN
MASAKHANE: RENEWAL OF LEASE OF MUNICIPAL PROPERTY TO HERMANUS
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7/2/3/1

W Murtz

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Hermanus Administration

18 March 2019

**THIS MATTER SERVED BEFORE THE JOINT PORTFOLIO COMMITTEE ON
16 APRIL 2019, WHICH COMMITTEE SUPPORTED THE RECOMMENDATION**

RESPONSIBLE OFFICIAL:

W MURTZ

TARGET DATE FOR IMPLEMENTATION:

31 MAY 2019

TARGET DATE TO INFORM APPLICANT:

10 MAY 2019

TARGET DATE TO INFORM OBJECTOR:

N/A

