

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

**3.
ERF 218 ZWELIHLE (SITUATED AT 59 LUSIBA STREET, ZWELIHLE): RENEWAL
OF LEASE OF MUNICIPAL PROPERTY TO MASIBULELE EDUCARE CENTRE**

7/2/3/1

A Le Roux

Manager: Property Administration

9 March 2021

(028) 316 - 5623

1. Executive Summary

To obtain approval to enter into a further lease agreement with Masibulele Educare Centre (hereinafter referred to as “the Applicant”) for a period of 9 (NINE) years and 11 (ELEVEN) months in respect of municipal property, being Erf 218 Zwelihle (1,300m² in extent) situated at 59 Lusiba Street, Zwelihle (hereinafter referred to as “the Property”), for operating the Masibulele Educare 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 Immoveable Property Policy of the Overstrand Municipality (2015)

6. Background/Discussion/Evaluation/Conclusion

Background/Discussion

The Applicant has been using the Property since 2001. Initially the lease agreement was entered into with the Hermanus Rainbow Trust who sub-

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leased the Property to the Applicant. With the previous renewal of the lease agreement in 2011, the agreement was entered into directly with the Applicant for a period of 9 (NINE) years and 11 (ELEVEN) months, which commenced on 1 February 2011 and expired on 31 December 2020.

The process for the renewal of the lease agreement was commenced with timeously, however the Property Administration Department experienced difficulty with communication with the Applicant as the school uses one of the parent's email accounts for all correspondence and the parent serves as a middle man, creating the situation where it would take days, even over a week sometimes, for any feedback or confirmation. There were further delays in waiting for the Applicant to settle their municipal account, therefore the request for in principle approval could only be obtained late February 2021.

The Finance Department was requested to continue to levy the rental pending the finalisation of the renewal process as the Applicant is still in possession of 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.

A lease agreement was sent to the Applicant for signature (for administrative and audit purposes) with special conditions included in the agreement stipulating that the lease agreement is subject to a public participation process

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and the subsequent approval of the Executive Mayor (as delegated authority) allowing the Municipality to enter into the long term lease agreement.

The Property has been used by the Applicant for 20 years without complaints from the public. The municipal account is paid up to date. The Applicant delivers an important service to the community of Zwelihle by providing education and care to the children of the community.

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.”

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

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- 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”.**
- The proposal is that the lease agreement with the Applicant be renewed for a further period of 9 (NINE) years and 11 (ELEVEN) months for the purpose of managing the Masibulele Educare Centre, thus being a direct lease.
 - The application is for a long-term lease with an estimated income value of less than R10 million as the monthly rental for the 2020/2021 is R154.78 (ONE HUNDRED AND FIFTY FOUR RAND AND SEVENTY EIGHT CENTS) (VAT excluded), being the tariff for NPO’s in the annual budget, which tariff will escalate annually as approved in the Annual Budget.
 - The management and use of the Property will not be to gain profit as it will be managed by an NPO as an ECD (community-based facility). There is a zoning certificate confirming that the Property is zoned for Institutional purposes and the Property will therefore not be used for a formal business premises as this is not allowed for in terms of the zoning.
 - Lastly, the Applicant is already well established and provides an important service to the community of Zwelihle, it can be argued that 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.

It is therefore recommended that the Property be leased directly to the Applicant 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

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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 24 February 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 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.”*

The Applicant 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 24 February 2021 for a 30 (THIRTY) day objection/comment period. No objections/comments were received.

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Conclusion

With reference to the above discussion it is recommended that the lease of the Property to the Applicant be approved for a further period of 9 (NINE) years and 11 (ELEVEN) months from 1 January 2021 at a rental amount of R154.78 (ONE HUNDRED AND FIFTY-FOUR RAND AND SEVENTY EIGHT CENTS) (VAT excluded) per month as approved in the Annual Budget for the 2020/2021 financial year.

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 January 2021 for the 2020/2021 financial year 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 to be on 1 July 2021. All expenses pertaining to the proposed lease will be borne by the Applicant.

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

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

“The social development department does not have any objections in principle.

However, please note, that as far as I know, Ms Rwexana is the principal at Masibulele. Technically she is therefore an employee of the organisation. It is my opinion that it would be more prudent to enter into a lease agreement with the elected Chairperson of the organisation unless the management committee has delegated Ms Rwexana to enter into lease agreements. There must be a management committee in place that is responsible for the overall functioning of the services being rendered at the facility”

The Applicant confirmed that they have a management committee in place. The resolution that was provided for the signature of the lease agreement clearly indicated who the representative of the Applicant is.

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

“From the GIS data the Erf is zoned as single Residential 1. I however traced a zoning certificate issued during 2013 by Henk Olivier that the erf has an

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Institutional Zone 1 zoning status (copy attached) in terms of the zoning scheme applicable at the time. I therefore assume that the GIS information is incorrect and should be updated to that of Community Zone 1 (with a consent use for an Institution). I will contact the GIS operator to rectify the situation. In view of the above this Department has no objection to the renewal of the lease agreement.”

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

RECOMMENDATION:

1. that the lease of municipal property, being Erf 218 Zwelihle (1,300m² in extent), to Masibulele Educare Centre, for operating the Masibulele Educare Centre and related purposes at a rental amount of 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 January 2021 in terms of the Administration of Immoveable Property Policy of the Overstrand Municipality, **be approved**; and
2. that the rental amount mentioned in 1 above 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 to be on 1 July 2021.

RESPONSIBLE OFFICIAL:	N LIEBENBERG
TARGET DATE FOR IMPLEMENTATION:	24 MAY 2021
TARGET DATE TO INFORM APPLICANT:	10 MAY 2021
TARGET DATE TO INFORM OBJECTOR:	N/A

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A Le Roux

Manager: Property Administration

9 March 2021

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**THIS MATTER SERVED BEFORE THE JOINT PORTFOLIO COMMITTEE ON
20 APRIL 2021, WHICH COMMITTEE SUPPORTED THE RECOMMENDATION**

RESPONSIBLE OFFICIAL:

N LIEBENBERG

TARGET DATE FOR IMPLEMENTATION:

24 MAY 2021

TARGET DATE TO INFORM APPLICANT:

10 MAY 2021

TARGET DATE TO INFORM OBJECTOR:

N/A

ANNEXURE A



Erf 218 Zweilhle

