

**AGENDA of the
Portfolio Committee : Infrastructure & Planning
19 February 2019
(Also the agenda for the Mayoral Committee Meeting : 27 February 2019)**

13.

GANSBAAI, A PORTION OF ERF 1969 PEARLY BEACH SITUATED IN ELOXULWENI: RENEWAL OF LEASE OF MUNICIPAL PROPERTY TO FLOWER VALLEY CONSERVATION TRUST

7/2/3/1

M Erasmus

(028) 316-3724

Hermanus Administration

8 January 2019

1. Executive Summary

To obtain approval to enter into a further lease agreement with Flower Valley Conservation Trust, hereinafter referred to as "FVCT" in respect of a portion of Erf 1969 Pearly Beach ($\pm 385\text{m}^2$ in extent), situated in Disa Street, Eloxulweni, for the purpose of a managing an Early Childhood Development Centre and related activities.

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

Executive Mayor

5. Legal Requirements

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

6. Background/Discussion/Evaluation/Conclusion

Background

FVCT has been utilising a portion of Erf 1969 Pearly Beach for many years for the purpose of the Dolfyntjies Early Childhood Development Centre.

The last agreement was for a period of 3 (THREE) years which expired on 31 March 2018. Unfortunately the process was delayed by a colleague, no longer working for the Municipality, who previously dealt with the matter.

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There was a further delay due to our Department waiting on comments from another Department within the Municipality. As FVCT is still utilising the property the rental is still being levied on the municipal account.

The locality of the proposed lease area is indicated on the locality plan attached per "Annexure A".

Discussion

FVCT applied for a further lease agreement of 9 (NINE) years and 11 (ELEVEN) months but due to reasons explained by the Manager: Social Development discussed under point 9 below only a 3 (THREE) year agreement can be considered at this stage. The FVCT was informed accordingly. FVCT provides a very important service to the community of Eloxulweni and especially in the provision of care of and education to the children.

The area applied for has been used by FVCT for many years without any complaints from the public regarding the use of the property. The municipal account is paid to date.

Should the renewal of the lease agreement be approved the renewal date will be backdated to commence the day after expiry of the previous agreement.

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;

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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 the leasing of the said property to FVCT (as registered non-profit organisation) is in the interest of the community, the site is not classified as a business site and due to the nature of the lease and benefit to the community, it can be leased directly to FVCT without following a competitive process.

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 subject portion of Erf 1969 Pearly Beach to FVCT subject thereto that a public participation process is followed.

The proposed lease was advertised in The Gansbaai Courant on 20 December 2018 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.”

In this regard the rental charged will be in accordance with the tariff approved in the annual budget.

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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.”

FVCT 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 will be included in the lease agreement entered into with FVCT.

B. Advertisement/Notification

An advertisement for the lease of a portion of Erf 1969 Pearly Beach (±385m² in extent) was placed in the Gansbaai Courant on 20 December 2018 for a 30 (THIRTY) day objection/comment period. No objection/comments were received.

Conclusion

With reference to the above discussion it is recommended that the lease agreement with FVCT be approved for a further period of 3 (THREE) years at a rental amount of R140.00 (ONE HUNDRED AND FORTY RAND) (VAT Excluded) per month which is the amount approved in the 2018/2019 budget.

7. Financial Implications

The Municipality stands to gain a rental amount of R140.00 (ONE HUNDRED AND FORTY RAND) (VAT Excluded) per month 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, the next escalation to be on 1 July 2019. All expenses pertaining to the proposed lease will be borne by FVCT.

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8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

Senior Manager: Expenditure and Assets, Mr J Vorster - (028) 313 8305

As this is an income generating proposal involving an institution who delivers a service to the community of Pearly Beach, with no intention to dispose of the asset, there is no objection to the report.

Manager: Social Development, Mr G Smith - (028) 313 8046

Child Care facilities are a **local government function** in terms of Section 156 and Schedule 4B of the Constitution of the Republic of South Africa, 1996. The Local Government: Municipal Systems Act, No 32 of 2000 determines that a municipality can either perform these functions internally or externally through an external service provider. We do not have the capacity to perform this function internally and must therefore make use of an external service provider.

Lease agreements per se, does not constitute a proper agreement with an external service provider to provide a municipal service. It also lacks the necessary mechanisms required to monitor the quality of service being delivered. Early Childhood Development services must be provided at a minimum standard as set out in the Children's Act, No 38 of 2005.

This Department does not have any objections against Flower Valley's application. It is also mindful of the fact that the Property Administration Department cannot have occupancy of municipal premises where there is no agreement in place.

However, considering above mentioned, this department is of the opinion that a **maximum lease agreement of three years** should be considered. 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 a 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.

10. Annexures

Annexure A: Locality Map

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RECOMMENDATION:

1. that the lease of municipal property, being a portion of Erf 1969 Pearly Beach ($\pm 385\text{m}^2$ in extent), situated in Eloxulweni, to Flower Valley Conservation Trust for the purposes of managing an Early Childhood Development Centre and related purposes at the rental amount of R140.00 (ONE HUNDRED AND FORTY RAND) (VAT Excluded) per month for a further period of 3 (THREE) years as from 1 April 2018 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 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:	M ERASMUS
TARGET DATE FOR IMPLEMENTATION:	1 APRIL 2019
TARGET DATE TO INFORM APPLICANT:	12 APRIL 2019
TARGET DATE TO INFORM OBJECTOR:	N/A

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8 January 2019

**THIS MATTER SERVED BEFORE THE JOINT PORTFOLIO COMMITTEE ON
19 FEBRUARY 2019, WHICH COMMITTEE SUPPORTED THE RECOMMENDATION**

RESPONSIBLE OFFICIAL:

M ERASMUS

TARGET DATE FOR IMPLEMENTATION:

1 APRIL 2019

TARGET DATE TO INFORM APPLICANT:

12 APRIL 2019

TARGET DATE TO INFORM OBJECTOR:

N/A

