

**AGENDA of the
Portfolio Committee: Investment & Infrastructure
6 February 2023
(Also the agenda for the Mayoral Committee Meeting: 14 February 2023)**

12.

ERVEN 127, 129 AND A PORTION OF ERF 823 ZWELIHLE (SITUATED AT 46 LUSIBA STREET, ZWELIHLE): RENEWAL OF LEASE TO LUKHANYO PRIMARY SCHOOL

**A Le Roux
13 December 2022**

Senior Manager: Property Administration

(028) 316 - 5623

1. Executive Summary

To obtain approval to enter into a further lease agreement with Lukhanyo Primary School (hereinafter referred to as “Lukhanyo”) in respect of Erven 127, 129 and a portion of Erf 823 Zwelihle (jointly ±590m² in extent), situated at 46 Lusiba Street, Zwelihle (hereinafter referred to as “the Property”), for a period of 9 (NINE) years and 11 (ELEVEN) months for the purpose of operating and managing a Grade R Education Centre. The locality map is attached hereto as “Annexure A”.

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

- Municipal Asset Transfer Regulations (R. 878 of 2008)
- Administration of Immovable Property Policy of the Overstrand Municipality (2015)

6. Background/Discussion/Evaluation/Conclusion

Background/Discussion

Hermanus Rainbow Trust had a lease agreement with the Municipality for the Property and has been managing and operating the Grade R Education Centre on behalf of the Lukhanyo Primary School since 2016. Lukhanyo confirmed that the Grade R classes are now being managed by itself and that

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Lukhanyo and Hermanus Rainbow Trust have agreed to submit an application for the lease agreement with the Municipality to be ceded to Lukhanyo for the remainder of the lease period.

The Executive Mayor at a Mayoral Committee Meeting held on 30 May 2022 approved the application to cede to lease agreement from Hermanus Rainbow Trust to Lukhanyo. A cession agreement was entered into between the parties for the remainder of the lease period.

The latest lease agreement was for a period of 3 (THREE) years which commenced on 17 October 2019 and expired on 16 October 2022. Lukhanyo applied for a further lease agreement of 9 (NINE) years and 11 (ELEVEN) months.

Lukhanyo applied for the renewal in time and the renewal process was also commenced with by the Property Administration Department in time. Unfortunately, due to a delay with the signature of the cession agreement and the opening of a municipal account in the name of Lukhanyo, the renewal process could not be proceeded with until the cession agreement was fully signed, and the municipal account had been opened in the name of Lukhanyo.

The municipal account of Lukhanyo is paid up 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 Immoveable Property Policy of the Overstrand Municipality

The following conditions of said policy 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

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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 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 Property is not classified as a business site and the leasing of the Property to Lukhanyo is in the interest of the community, and Hermanus Rainbow Trust have been leasing it successfully since 2016 on behalf of Lukhanyo and due to the nature of the lease and benefit to the community and especially the children of the area, it can be leased directly to Lukhanyo without following a competitive process.

Although the proposed lease is for a long-term period the rental that will be received will not be more than R10 million. The current rental is set at a tariff for the lease of municipal property for registered Social Care Institutions/ Organisations/ NPO's/ PBO's/ Sport facilities/ Community organisations, being R167.84 (ONE HUNDRED AND SIXTY-SEVEN RAND AND EIGHTY-FOUR CENTS) (VAT excluded) per month, which rental will escalate annually in terms of the approved tariff in the financial budget of the Municipality.

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:

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- 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.”*

Paragraph 22: *“The in-principle approval of the Accounting Officer must be obtained with any request for the renewal of the lease agreement.”*

Lukhanyo applied for the renewal of the lease agreement which was approved in principle by the Municipal Manager on 17 October 2022 for a period of 9 (NINE) years and 11 (ELEVEN) months, 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 Executive Mayor’s approval is hereby sought, and the proposed lease was advertised in The Village News on 9 December 2022 for a 30 (THIRTY) day comment/objection period. No objections have been 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 tariff for the lease of municipal property for registered Social Care Institutions/ Organisations/ NPO’s/ PBO’s/ Sport facilities/ Community organisations will be levied. As the agreement will be backdated from 16 October 2022 the lease will commence at a monthly rental amount of R160.87 (ONE HUNDRED AND SIXTY RAND AND EIGHTY-SEVEN CENTS) (VAT excluded) which was the tariff for the 2021/2022 financial year. The rental from 1 July 2022 will be R167.84 (ONE HUNDRED AND SIXTY-SEVEN RAND AND EIGHTY-FOUR CENTS) (VAT excluded) per month. 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.”*

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Lukhanyo 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 cost.

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.

B. Advertisement/Notification

An advertisement for the lease of the Property to Lukhanyo was published in The Village News on 9 December 2022 for a 30 (THIRTY) day objection/comment period. No objection/comment was received.

Conclusion

With reference to the above discussion, it is recommended that the lease of the Property to Lukhanyo be approved for a further period of 9 (NINE) years and 11 (ELEVEN) months from 17 October 2022 at a rental amount of R167.83 (ONE HUNDRED AND SIXTY-SEVEN RAND AND EIGHTY-THREE CENTS) (VAT excluded) per month for the 2022/2023 financial year.

7. Financial Implications

The Municipality stands to gain rental in the amount of R167.83 (ONE HUNDRED AND SIXTY-SEVEN RAND AND EIGHTY-THREE CENTS) (VAT excluded) where after the rental amount will escalate annually on 1 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 Lukhanyo.

8. Staff Implications

None

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9. Comments from other Departments, Divisions and Administrations

Town Planner - Mr H Boshoff

“Both Erven 127 and 129 are zoned for single residential purposes, whilst Erf 823 is zoned Transport Zone 2 (public road).

A section of the building on Erf 129 encroaches over the common boundary with Erf 823, which is a transgression in terms of the Land Use Scheme, National Building Legislation, and SANS (South African National Standards). Application must be made for a consent use for a “place of instruction” since the usage for a Grade R pre-school is not a primary land use on either erf 127 or 129. The portion of the structure over the common boundary onto the road reserve must also be addressed. It can be done by a planning application and the lessees must be responsible to get all rights and irregularities in place. The two structures on Erf 823, need to be addressed by the Municipality since it is not in line with the primary use of the erf being road reserve.

The erven are very small, and consolidation thereof should be considered due to the proposed usage.

In principle there is no objection to the new lease agreement, but the above needs to be addressed.”

The Manager: Property Administration – Ms A Le Roux provided the following comment, on the above comment of the Town Planner:

“The specific property was used as a clinic for years before it was allocated for this purpose. The zoning must be investigated (if correct) and if necessary, it is requested that any land use planning matter be addressed the Municipality internally.”

The Municipal Manager and Director: Investment and Planning supported the comment of the Manager: Property Administration.

Senior Manager: Expenditure & Assets: Mr. J Vorster

“As this is a revenue generation proposal, with no intention of selling the asset, there is no objection against the application.”

10. Annexures

Annexure A: Locality Plan

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RECOMMENDATION:

1. that the renewal of the lease of municipal properties, being erven 127, 129 and a portion of Erf 823 Zwelihle (jointly ±590m² in extent), to Lukhanyo Primary School for the purpose of a Grade R Education Centre at the rental amount of R167.83 (ONE HUNDRED AND SIXTY-SEVEN RAND AND EIGHTY-THREE CENT) (VAT excluded) per month for a period of 9 (NINE) years and 11 (ELEVEN) months as from 17 October 2022 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 annually on 1 July in accordance with the tariffs stipulated in the Annual Budget as approved by Council, the first escalation to be on 1 July 2023.

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| RESPONSIBLE OFFICIAL : | R OCTOBER |
| TARGET DATE FOR IMPLEMENTATION : | 15 MARCH 2023 |
| TARGET DATE TO INFORM APPLICANT : | 30 MARCH 2023 |
| TARGET DATE TO INFORM OBJECTOR : | N/A |

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A Le Roux

Senior Manager: Property Administration

13 December 2022

(028) 316 - 5623

THIS MATTER SERVED BEFORE THE INVESTMENT & INFRASTRUCTURE PORTFOLIO COMMITTEE ON 6 FEBRUARY 2023, WHICH COMMITTEE SUPPORTED THE RECOMMENDATION

RESPONSIBLE OFFICIAL :

R OCTOBER

TARGET DATE FOR IMPLEMENTATION :

15 MARCH 2023

TARGET DATE TO INFORM APPLICANT :

30 MARCH 2023

TARGET DATE TO INFORM OBJECTOR :

N/A

