

**AGENDA of the  
Portfolio Committee : Investment & Infrastructure  
2 November 2022  
(Also the agenda for the Mayoral Committee Meeting : 16 November 2022)**

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**5.  
ERF 9515 ZWELIHLE KNOWN AS “THE ZWELIHLE MALL”: DEVIATION FROM  
PARAGRAPH 18 AND 20.1(B) OF THE ADMINISTRATION OF IMMOVABLE  
PROPERTY POLICY OF 2015 ALLOWING THE MUNICIPALITY TO TEMPORARY  
RENEW THE LEASE OF MUNICIPAL PROPERTY TO PEMZO CONSTRUCTION  
CC FOR A SHORT-TERM PERIOD - FINALISATION OF THE TENDER PROCESS**

**7/2/3/1**

**A Le Roux**

**Manager: Property Administration**

**6 October 2022**

**(028) 316-5623**

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**1. Executive Summary**

To obtain approval from the Executive Mayor to enter into a further short-term lease agreement of 8 (EIGHT) months or 1 (ONE) month after tender award with Pemzo Construction CC in respect of Erf 9515 Zwelihle, ±1,280m<sup>2</sup> in extent, for the purpose to manage, sub-lease, supervise and maintain the property; and

To obtain approval from Council for the deviation from paragraph 18 of the Administration of Immovable Property Policy (as approved by Council on 25 November 2015) allowing the Municipality to enter into a further short-term lease agreement with Pemzo Construction CC in respect of Erf 9515 Zwelihle, ±1,280m<sup>2</sup> in extent, for the purpose to manage, sub-lease, supervise and maintain the property, without following a competitive bidding process; and

To obtain approval from Council for the deviation from paragraph 20.1(b) of the Administration of Immovable Property Policy (as approved by Council on 25 November 2015) allowing the Municipality to enter into a further short-term lease agreement with Pemzo Construction CC in respect of Erf 9515 Zwelihle, ±1,280m<sup>2</sup> in extent, for the purpose to manage, sub-lease, supervise and maintain the property, without following a public participation 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

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**5. Legal Requirements**

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

**6. Background/Discussion/Evaluation/Conclusion**

**Background**

Pemzo Construction CC, hereinafter referred to as “Pemzo”, had lease agreements with the Overstrand Municipality for the lease of Erf 9515 Zwelihle, also known as “Zwelihle Mall”, hereinafter referred to as “the Property”, for a cumulative total period of 7 years for business purposes to manage, sub-lease, supervise and maintain the property. The last lease agreement was for a short-term period of 8 (eight) months and expired on 31 May 2022. A further in-principle approval was obtained to continue with this lease pending the second tender and a lease agreement was sent to Pemzo for signature, which lease agreement is subject to this approval. The rental is still being levied on the account. Please see locality maps hereby attached as Annexures A1 and A2 for ease of reference.

The lease agreement was partly entered into for the safety and practicality of having an occupant in the building whilst the Municipality concludes a tender for the lease, management, maintenance and sub-lease of a portion of Erf 9515 Zwelihle for business purposes for a contract period of 9 (nine) years and 11 (eleven) months.

The tender for the lease, management, maintenance and sub-lease of a portion of Erf 9515 Zwelihle for business purposes for a contract period of 9 (nine) years and 11 (eleven) months was duly advertised during the period of the last lease agreement and was made available on 14 January 2022 under tender number SC2283/2021. The tender process was completed, and bids were evaluated. Unfortunately, no bidder was deemed responsive, and the tender was cancelled.

**Discussion**

Following the cancellation of tender SC2283/2021 due to no responsive tenders received, the specifications of the tender document was slightly amended and the new tender for the lease of a portion of Erf 9515 Zwelihle was advertised and made available from 2 September 2022 until the closing date and time of 07 October 2022 at 12h00, under tender number SC2329/2022. As soon as the bids are closed, the evaluation of the tender will be commenced with without undue delay.

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As it is in the best interest of the Municipality to not have a municipal building remain vacant due to the risk of vandalism, the Municipal Manager approved in principle a short-term renewal of the lease agreement on 2 September 2022 for a period of 8 (EIGHT) months or 1 (ONE) month after the award of the tender, whichever comes first. The Municipal Manager's in principle approval also includes a provision that the Municipality could, in agreement with the lessee, take early occupation of the top part of the building on a portion of Erf 9515 Zwelihle should the Directorate: Local Economic Development require same for its needs. The Municipal Manager's in principle approval is subject to the approval from the Executive Mayor for the renewal of the short-term lease agreement and Council's approval for the deviation from paragraphs 18 and 20.1(b) of the Administration of Immovable Property Policy.

A written lease agreement that is subject to the approval from the Executive Mayor for the renewal of the short-term lease agreement and Council's approval for the deviation from paragraphs 18 and 20.1(b) of the Administration of Immovable Property Policy is in the process of being entered into for administrative purposes.

### **Evaluation**

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

The following paragraphs of the Administration of Immovable Property Policy are applicable:

**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 process for renewal began 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.

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**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”.**

The long-term lease of a portion of the Property is being made available by means of a tender and will follow a public participation process. Even though the lease with Pemzo will be for a short period until the tender is awarded the cumulative total lease period is more than 3 years and therefore is classified as a long-term lease. Therefore, a request is made to Council to deviate from this paragraph. The request is that the agreement be renewed for a period of 8 (EIGHT) months or 1 (ONE) month after the tender is awarded, whichever one comes first.

**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 short-term renewal of the lease of the Property to the Applicant for a period of 8 (EIGHT) months or 1 (ONE) month after the tender is awarded, whichever comes first, subject thereto that the approval of

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Council is obtained for the deviation from paragraphs 18 and 20.1(b) of the Administration of Immovable Property Policy.

A request is made to Council to deviate from paragraph 20.1(b) as the Property will only be leased for a short period and because the tender for the long-term lease will be advertised.

The approval from the Executive Mayor for the renewal of the lease agreement is hereby requested subject to the mentioned deviations being approved by Council.

**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 current rental is R25,517,04 (TWENTY-FIVE THOUSAND FIVE HUNDRED AND SEVENTEEN RAND AND FOUR CENTS) (Excluding VAT) per month. The current rental is an amount which was deemed to be competitive, and market related following a tender process in 2015 as it was the highest offer at that time, and to date it has increased annually in terms of the prevailing consumer price index of the relevant year. The current rental can therefore continue to be considered as a market related rental amount as it has increased annually in terms of the prevailing consumer price index.

A valuation was done in August 2022 for purposes of the tender for the bottom part of the building on the Property, that took the history of the building’s acquisition (explained below) into account. The rental for the ground floor of the building came to an amount of R25.00/m<sup>2</sup> (TWENTY FIVE RAND PER SQUARE METRE)(VAT Excluded) per month, which equates to a total rental of R11,700.00 (ELEVEN THOUSAND SEVEN HUNDRED RAND) (VAT Excluded) per month. The latest valuation took into account the historical existence of the Property, namely that it was acquired and developed using funds acquired from National Treasury for the advancement of local entrepreneurs. Should the Directorate: Local Economic Development take earlier occupation of the top part of the building situated on the Property, it is recommended that this amount of R11,700.00 (ELEVEN THOUSAND SEVEN HUNDRED RAND) (VAT Excluded) per month be used as the rental amount payable by Pemzo for the lease of the bottom part of the building only.

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B: Advertisement/Notification

It is herein requested that a deviation from paragraph 20.1(b) of the Administration of Immovable Property Policy be approved.

**Conclusion**

Taking the above into consideration, it is recommended that:

- (a) The Executive Mayor approves the short-term renewal of the lease of the Property to Pemzo for a period of 8 (EIGHT) months or 1 (ONE) month after the award of the tender, whichever one comes first, commencing from 1 June 2022, at a rental amount of R25,517,04 (TWENTY FIVE THOUSAND FIVE HUNDRED AND SEVENTEEN RAND AND FOUR CENTS) (Excluding VAT) per month and in the event that the Municipality takes occupation of the top part of the building on the Property, for the bottom part of the building on the Property at a rental amount of R11,700.00 (ELEVEN THOUSAND SEVEN HUNDRED RAND) (VAT Excluded) per month; and
- (b) Council approves the deviation from paragraph 18 of the Administration of Immovable Property Policy in order to renew the current lease agreement with Pemzo for a period of 8 (EIGHT) months or 1 (ONE) month after the award of the tender, whichever one comes first, without following a competitive process, and
- (c) Council approves the deviation from paragraph 20.1(b) of the Administration of Immovable Property Policy in order to renew the current lease agreement with Pemzo for a period of 8 (EIGHT) months or 1 (ONE) month after the award of the tender, whichever one comes first, without following a public participation process.

**7. Financial Implications**

The Municipality stands to gain a rental amount of R25,517,04 (TWENTY-FIVE THOUSAND FIVE HUNDRED AND SEVENTEEN RAND AND FOUR CENTS) (Excluding VAT) per month or a rental amount of R11,700.00 (ELEVEN THOUSAND SEVEN HUNDRED RAND) (VAT Excluded) per month, as the case may be, as well as service charges.

**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 application is dealt with in terms of the Administration of Immoveable Property Policy and it relates to a revenue generating project, with no intension of disposing of the asset, there is no objection to the application.”*

**10. Annexures**

Annexure A1: Locality Map 1

Annexure A2: Locality Map 2

**RECOMMENDATION TO THE EXECUTIVE MAYOR:**

1. that the short-term renewal of the lease of Erf 9515 Zwelihle, ±1,280m<sup>2</sup> in extent, to Pemzo Construction CC for a period of 8 (EIGHT) months or 1 (ONE) month after the award of the tender, whichever one comes first, from 1 June 2022 for business purposes to manage, sub-lease, supervise and maintain the property, at a rental amount of R25,517,04 (TWENTY FIVE THOUSAND FIVE HUNDRED AND SEVENTEEN RAND AND FOUR CENTS) (Excluding VAT) per month and in the event that the Municipality takes occupation of the top part of the building on Erf 9515 Zwelihle, the short-term renewal of the lease for the bottom part of the building on Erf 9515 Zwelihle at a rental amount of R11,700.00 (ELEVEN THOUSAND SEVEN HUNDRED RAND) (VAT Excluded) per month, **be approved**; and
2. that the abovementioned approval be subject to Council approving the deviation from paragraphs 18 and 20.1(b) 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 for a short-term period the current lease agreement with Pemzo Construction CC for a period of 8 (EIGHT) months or 1 (ONE) month after the award of the tender, whichever one comes first, without following a competitive process, **be approved**; and
2. that the deviation from paragraph 20.1(b) of the Administration of Immovable Property Policy in order to renew for a short-term period the current lease agreement with Pemzo Construction CC for a period of 8 (EIGHT) months or 1 (ONE) month after the award of the tender, whichever one comes first, without following a public participation process, **be approved**.

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| <b>RESPONSIBLE OFFICIAL :</b>            | <b>R MARINUS</b>        |
| <b>TARGET DATE FOR IMPLEMENTATION :</b>  | <b>15 DECEMBER 2022</b> |
| <b>TARGET DATE TO INFORM APPLICANT :</b> | <b>15 DECEMBER 2022</b> |
| <b>TARGET DATE TO INFORM OBJECTOR :</b>  | <b>N/A</b>              |

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5.

**ERF 9515 ZWELIHLE KNOWN AS “THE ZWELIHLE MALL”: DEVIATION FROM PARAGRAPH 18 AND 20.1(B) OF THE ADMINISTRATION OF IMMOVABLE PROPERTY POLICY OF 2015 ALLOWING THE MUNICIPALITY TO TEMPORARILY RENEW THE LEASE OF MUNICIPAL PROPERTY TO PEMZO CONSTRUCTION CC FOR A SHORT-TERM PERIOD - FINALISATION OF THE TENDER PROCESS**

7/2/3/1

A Le Roux

Manager: Property Administration

6 October 2022

(028) 316-5623

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**THIS MATTER SERVED BEFORE THE INVESTMENT & INFRASTRUCTURE PORTFOLIO COMMITTEE ON 2 NOVEMBER 2022, WHICH COMMITTEE RECOMMENDED AS FOLLOWS:**

**RECOMMENDATION TO THE EXECUTIVE MAYOR:**

1. that the short-term renewal of the lease of Erf 9515 Zwelihle, ±1,280m<sup>2</sup> in extent, to Pemzo Construction CC for a period of 8 (EIGHT) months or 1 (ONE) month after the award of the tender, whichever one comes first, from 1 June 2022 for business purposes to manage, sub-lease, supervise and maintain the property, at a rental amount of R25,517,04 (TWENTY FIVE THOUSAND FIVE HUNDRED AND SEVENTEEN RAND AND FOUR CENTS) (Excluding VAT) per month and in the event that the Municipality takes occupation of the top part of the building on Erf 9515 Zwelihle, the short-term renewal of the lease for the bottom part of the building on Erf 9515 Zwelihle at a rental amount of R11,700.00 (ELEVEN THOUSAND SEVEN HUNDRED RAND) (VAT Excluded) per month, **be approved**; and
2. that the abovementioned approval be subject to Council approving the deviation from paragraphs 18 and 20.1(b) 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 for a short-term period the current lease agreement with Pemzo Construction CC for a period of 8 (EIGHT) months or 1 (ONE) month after the award of the tender, whichever one comes first, without following a competitive process, **be approved**; and
2. that the deviation from paragraph 20.1(b) of the Administration of Immovable Property Policy in order to renew for a short-term period the current lease agreement with Pemzo Construction CC for a period of 8 (EIGHT) months or 1 (ONE) month after the award of the tender, whichever one comes first, without following a public participation process, **be approved**.

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ANNEXURE A1 – LOCALITY MAP 1



ANNEXURE A2 – LOCALITY MAP 2

