

**AGENDA of the
Portfolio Committee: Infrastructure & Planning
23 March 2021
(Also the agenda for the Mayoral Committee Meeting: 31 March 2021)**

6.

**A PORTION OF ERF 103 AND A PORTION OF REMAINDER ERF 316 ZWELIHLE
(SITUATED NEAR 30 KHOHLEKALA STREET, ZWELIHLE): RENEWAL OF LEASE
OF MUNICIPAL PROPERTY TO THE HOLY UNITED CHURCH OF CHRIST**

7/2/3/1

A Le Roux

Manager: Property Administration

8 February 2021

(028) 316 - 5623

1. Executive Summary

To obtain approval to enter into a further lease agreement with the Holy United Church Of Christ (hereinafter referred to as “the Applicant”) for a period of 9 (NINE) years and 11 (ELEVEN) months in respect of municipal property, a portion of Erf 103 and a portion of Remainder Erf 316 Zwelihle (jointly ±108m² in extent) situated near 30 Khohlekalala Street, Zwelihle (hereinafter referred to as “the Property”), for church 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 Immovable Property Policy of the Overstrand Municipality (2015)

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6. Background/Discussion/Evaluation/Conclusion

Background/Discussion

The Applicant has been using the Property well before 1998 when the Property was allocated for church purposes by the former Zwelihle Municipality. An extensive search for the old lease agreement in the Zwelihle area, for this church, was performed several times and no agreement could be found, but the allocation was confirmed by the municipal account which was opened by the church and where rental has been levied on for years. Subsequently a lease agreement was entered into with the church, with the approval of the delegated authority at that time for a period of 9 (NINE) years and 11 (ELEVEN) months, which commenced on 1 November 2010 and expired on 30 September 2020.

The Applicant applied to renew the lease agreement for a further 9 (NINE) years and 11 (ELEVEN) months. The process for renewal was commenced with timeously. Whilst in the process of obtaining comments for the renewal of the lease, it however came to the attention of the Property Administration Department that additional structures, including a fully developed residential dwelling of $\pm 171\text{m}^2$ in extent (excluding the boundary wall), were constructed on Erf 103 Zwelihle without the knowledge or written consent of the Municipality. Whether this residential dwelling was already built on Erf 103 Zwelihle when this lease was initially formalised in 2010 (as it was an old Zwelihle Municipality lease with no written lease agreement on record prior to 2010), could not be established. Why this was not discovered and addressed in 2010 can also not be commented on.

A thorough investigation was subsequently done which unfortunately delayed the finalisation of the lease renewal process. During the investigation the following was found:

1. The house located on Erf 103 Zwelihle along with the other structures, were not constructed by the Applicant, but was the result of a misinterpretation of the lay-out of the surrounding property boundaries and building plans.
2. The building plan for the house was approved on Erf 104 Zwelihle, but erroneously built on the adjoining Erf 103 Zwelihle. What is clear is that the initial building plans were approved for a house of 63.53m^2 , with the final size of the house seeming to be $\pm 171\text{m}^2$ in extent according to GIS. The house with the boundary wall will not fit onto Erf 104 Zwelihle.
3. The shacks were erroneously erected on Erf 103 Zwelihle as opposed to Erf 102 Zwelihle.
4. The other tin roof house, which is currently built over erven 102 and 103 Zwelihle, was supposed to be built over erven 101 and 102 Zwelihle,

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which are in the process of being consolidated and currently shown on GIS as unregistered Erf 559 Zwelihle.

5. It is accepted that the shack on Erf 104 Zwelihle should most probably have been erected on Erf 105 Zwelihle.
6. This all created a domino effect resulting in the Applicant building their church over the boundary of a portion of Erf 103 and a portion of Remainder Erf 316 Zwelihle, the latter being a road reserve.

An investigation on a larger scale must however be done to determine how the above can be rectified taking the relevant legislation, by-laws and policies into consideration.

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.

As the investigation will take time and the Applicant is still in occupation of the building they erected and further to ensure that this asset is not vandalised, it is suggested that the Municipality still accommodate them, but restrict the lease area to the footprint of the existing building. As they are paying a rental approved in the tariffs, a reduced size will not influence the rental payable. This proposal was discussed with the Applicant, subject to approval thereof by delegated authority, and the Applicant found it to be in order.

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 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 a considerable time without complaints from the public. The municipal account is paid up to date. The Applicant delivers a service to the community of Zwelihle.

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,

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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 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 be renewed for a further 9 (NINE) years and 11 (ELEVEN) months for church purposes, thus 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).
- The application is for church purposes and the applicable even the church is built on are zoned as Community Zone 1 and Transport Zone 2 respectively and can therefore not be used as a formal business premises.
- The income generated from the lease will be far less than the costs of advertising a tender. The Property itself can at this stage not be made available by means of a competitive process until such time

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- the problems identified are adequately addressed.
- A further lease to the Applicant will be for the benefit of the community as they will be receiving the services and support from their local church.
- Lastly, the Applicant invested a fair amount of money in developing the Property and constructing the building.

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 further lease of the Property to the Applicant, subject to a public participation process being followed and further subject to the approval of the Executive Mayor as delegated authority.

The proposed lease was advertised in The Village News on 23 December 2020 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.”

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The Applicant will be liable for the payment of all costs relating to the renewal of the lease agreement which in this case so 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 23 December 2020 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 of the Property to the Applicant be approved for a further period of 9 (NINE) years and 11 (ELEVEN) months from 1 October 2020 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 October 2020 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

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9. Comments from other Departments, Divisions and Administrations

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

“In terms of the Zoning map the property is zoned Community zone. There is no objection to renew the lease.

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 a portion of Erf 103 and a portion of Remainder Erf 316 Zwelihle, (jointly ±108m² in extent), to the Holy United Church Of Christ, for church 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 October 2020 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 2021.

RESPONSIBLE OFFICIAL:	N LIEBENBERG
TARGET DATE FOR IMPLEMENTATION:	16 APRIL 2021
TARGET DATE TO INFORM APPLICANT:	9 APRIL 2021
TARGET DATE TO INFORM OBJECTOR:	N/A

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7/2/3/1

A Le Roux

Manager: Property Administration

8 February 2021

(028) 316 - 5623

**THIS MATTER SERVED BEFORE THE JOINT PORTFOLIO COMMITTEE ON
23 MARCH 2021, WHICH COMMITTEE SUPPORTED THE RECOMMENDATION**

RESPONSIBLE OFFICIAL:

N LIEBENBERG

TARGET DATE FOR IMPLEMENTATION:

16 APRIL 2021

TARGET DATE TO INFORM APPLICANT:

9 APRIL 2021

TARGET DATE TO INFORM OBJECTOR:

N/A

