

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

**6.
A PORTION OF ERF 1933 GANSBAAI (SITUATED IN MANDELA STREET,
MASAKHANE): RENEWAL OF LEASE OF MUNICIPAL PROPERTY TO GOOD
HOPE EARLY CHILDHOOD DEVELOPMENT CENTRE**

7/2/3/1

R Marinus

Acting Manager: Property Administration

13 September 2021

(028) 316 5609

1. Executive Summary

To obtain approval to enter into a further lease agreement with Good Hope Early Childhood Development Centre (hereinafter referred to as “Good Hope”), in respect of a portion of Erf 1933 Gansbaai situated in Mandela Street, Masakhane (±3,929.6m² in extent) (hereinafter referred to as “the Property”), for a period of 9 (NINE) years and 11 (ELEVEN) months for the purpose of managing an Early Childhood Development Centre and related purposes. 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

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

6. Background/Discussion/Evaluation/Conclusion

Background/ Discussion

Good Hope has been utilising the Property for the past few years for the purpose of managing an Early Childhood Development Centre. A lease agreement was previously entered into with Flower Valley Conservation Trust

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

who was assisting with the management of the Good Hope Early Childhood Development Centre as Good Hope was not previously registered as an NPO.

The last agreement was for a period of 3 (THREE) years which commenced on 1 November 2018 and will expire on 31 October 2021.

Good Hope applied for the renewal of the lease agreement and the lease renewal was approved in principle by the Municipal Manager on 24 June 2021 for a period of 9 (NINE) years and 11 (ELEVEN) months.

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.

Good Hope delivers an important service to the community of Masakhane through educating their children and no complaints regarding the use of the Property by Good Hope were received during their previous periods of lease. The municipal account is paid up to date.

Evaluation

A. Administration of Immoveable Property Policy of the Overstrand Municipality

The following conditions of said policy apply:

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

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 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”.**

Although the proposed lease is for a long term period the rental that will be received will not be in excess of R10 million as the rental charge will be in accordance with the tariffs approved in the Annual Budget for lease of municipal land to NPO's for the specific financial year. Currently the rental amount is R160.87 (ONE HUNDRED AND SIXTY RAND AND EIGHTY SEVEN CENTS) (VAT excluded).

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

The Property is zoned: Open Space Zone 2: Public Open Space and may not be used as a formal business premises as this is not allowed for in terms of the zoning.

Good Hope delivers an important service to the community and has been leasing the Property successfully for the past few years without any complaints from the community. 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 and as the financial implication to make the Property available via the competitive bidding process will be more than that of the rental amount received.

As Good Hope is a registered NPO that uses the Property and manages an ECD, it can be argued that the Property be leased directly to Good Hope without following a competitive process as the ECD is a community based facility that delivers a very important service to the community which operates not to gain profit.

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.”**

Good Hope applied for the renewal of the lease agreement which was approved in principle by the Municipal Manager on 24 June 2021 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 Gans-Berg News on 20 August 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”.

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

The tariff for lease of municipal property to registered Social Care Institutions/Organisations/NPO's/PBO's/Sport facilities is R160.87 (ONE HUNDRED AND SIXTY RAND AND EIGHTY SEVEN CENTS) (VAT excluded) per month for the 2021/2022 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.”

Good Hope 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.

B. Advertisement/Notification

An advertisement for the lease of the Property was placed in Gans-Berg News on 20 August 2021 for a 30 (THIRTY) day objection/comment period. No objections were received.

Conclusion

With reference to the above discussion it is recommended that the lease of the Property to Good Hope be approved for a further period of 9 (NINE) years and 11 (ELEVEN) months from 1 November 2021 at a rental amount of R160.87 (ONE HUNDRED AND SIXTY RAND AND EIGHTY SEVEN CENTS) (VAT excluded) per month for the 2021/2022 financial year.

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

7. Financial Implications

The Municipality stands to gain rental in the amount of R160.87 (ONE HUNDRED AND SIXTY RAND AND EIGHTY SEVEN CENTS) (VAT excluded) per month from 1 November 2021 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, next escalation to be on 1 July 2022. All expenses pertaining to the proposed lease will be borne by Good Hope.

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

Town Planner: Mr S van Merwe – (028) 313 8900

“The zoning of Erf 1933 Masakhane is Open Space Zone 2 : Public Open Space in terms of the Overstrand Land Use Scheme, 2020. The lease area is situated on a property with various uses, namely that contains sport complex / fields with associated facilities, a clinic and also an ECD facility. Previously there was a building that was also leased by users of the sports field. I am not sure whether it is still the case.

The utilisation of the proposed lease area as an ECD facility is not in accordance with the provisions of the Land Use Scheme, which defines Public Open Space as “means land which is in public ownership, used primarily for outdoor sports, play, rest or recreation or as a park area or nature area, and includes associated buildings, infrastructure and uses”

An ECD facility is not considered an associated use in the context of Public Open Space. Previously the lease agreement was supported on the basis of the formalization of the unauthorised land use. The opinion is held that the community facility should be formalised on its own erf. Thus an application for subdivision, rezoning to community zone (day care centre) and closure of public place will be applicable. Further an important aspect to consider is the safety and health risks associated with the various uses on the property (clinic, ECD facility and Sports grounds). It was previously indicated that a clinic in the vicinity of an ECD site is not ideal since the uses needs to be separate from each other with separate entrances and amenities. The area for the ECD facility is not sufficient to provide adequate play space and parking to serve the needs of the facility.

It is therefore recommended that the renewal of the lease be subject to the relevant land development approvals being obtained following a detailed

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

planning of the overall property to ensure adequate parking, safe access / egress as well as the safety of the occupants of the ECD facility.”

Comments from Property Administration Department: The Property was inspected by the Property Administration Department and it can be confirmed that the clinic has its own separate entrance from the ECD. The clinic has obtained sub-lease approval. The Town Planning Department confirmed that they commenced with the town planning processes as per the original lease approval, they should just finalise the process.

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

“The social development department supports the renewal of the lease. The organisation is providing a valuable service to Masakhane community and there is a general shortage of ECD facilities in Masakhane and the Overstrand at large.”

Senior Manager: Expenditure & Assets, Hermanus – J Vorster 028 313 8046

“As this is an income generating proposal, with no intention of selling the asset, there is no objection against the application.”

10. Annexures

Annexure A: Locality Plan

RECOMMENDATION:

1. that the lease of municipal property, being a portion of Erf 1933 Gansbaai (±3,929.6m² in extent), to Good Hope Early Childhood Development Centre, for managing an Early Childhood Development Centre and related purposes at a rental amount of R160.87 (ONE HUNDRED AND SIXTY RAND AND EIGHTY SEVEN CENTS) (VAT excluded) per month for a period of 9 (NINE) years and 11 (ELEVEN) months from 1 November 2021 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.

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

RESPONSIBLE OFFICIAL :	R OCTOBER
TARGET DATE FOR IMPLEMENTATION :	30 NOVEMBER 2021
TARGET DATE TO INFORM APPLICANT :	15 NOVEMBER 2021
TARGET DATE TO INFORM OBJECTOR :	N/A

**AGENDA of the
Portfolio Committee : Infrastructure & Planning
19 October 2021
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7/2/3/1

R Marinus

Acting Manager: Property Administration

13 September 2021

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THIS MATTER SERVED BEFORE THE JOINT PORTFOLIO COMMITTEE ON 19 OCTOBER 2021, WHICH COMMITTEE SUPPORTED THE RECOMMENDATION

RESPONSIBLE OFFICIAL :

R OCTOBER

TARGET DATE FOR IMPLEMENTATION :

30 NOVEMBER 2021

TARGET DATE TO INFORM APPLICANT :

15 NOVEMBER 2021

TARGET DATE TO INFORM OBJECTOR :

N/A

