

**AGENDA of the
Portfolio Committee : Infrastructure & Planning
19 September 2018
(Also the agenda for the Mayoral Committee Meeting : 26 September 2018)**

**3.
HERMANUS, A PORTION OF ERF 775 FISHERHAVEN: DEVIATION FROM
PARAGRAPHS 18 AND 24 OF THE ADMINISTRATION OF IMMOVABLE
PROPERTY POLICY OF 2015 ALLOWING THE MUNICIPALITY TO ENTER INTO A
FUTHER TEMPORARY LEASE AGREEMENT WITH LAKE MARINA YACHT AND
BOAT CLUB**

7/2/3/1

M Erasmus

(028) 316-3724

Hermanus Administration

13 August 2018

1. Executive Summary

To obtain approval from the Executive Mayor to enter into a further lease agreement with Lake Marina Yacht and Boat Club, hereinafter referred to as "LMYCB" in respect of a portion of Erf 775 Fisherhaven for the purpose of managing the Lake Marina Yacht and Boat club as well as operating 39 caravan sites for members and related activities; and

To obtain approval from Council for the deviation from paragraph 18 and 24 of the Administration of Immovable Property Policy of 2015 allowing the Municipality to enter into a further lease agreement with LMYCB in respect of a portion of Erf 775 Fisherhaven for the purpose of managing the Lake Marina Yacht and Boat club as well as operating 39 caravan sites for members and related activities without following a competitive bidding 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.

5. Legal Requirements

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

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6. Background/Discussion/Evaluation/Conclusion

Background

LMYBC was formed as a Voluntary Association and has been managing the facilities since August 1977 of which the lease agreement expired on 30 June 2017. It was decided that the said property must be made available for development through a competitive process. As the investigation and planning regarding the development is still in process a temporary agreement was entered into with LMYCB for an 18 (EIGHTEEN) month period which will expire on 31 December 2018.

The planning is still in process and as the property cannot remain unoccupied for any period due to the risk of vandalism and further as the cost of a tender for a short-term lease of the said property will not be cost effective it was recommended that another short term direct lease to LMYCB be considered as a winding down contract.

The previous temporary renewal was approved in light of the envisaged development of the area, which development will be done after a tender process is followed for the development of the area and certain processes still needed to be completed before the tender could be placed for the development.

Discussion

As there are still a few processes to be followed before the tender can be placed for the envisaged development, it is recommended that a lease agreement for another 18 (EIGHTEEN) month be entered into with LMYCB subject thereto that Council approves the requested deviations and the Executive Mayor approves the renewal of the lease agreement and further subject to a public participation process being followed.

Evaluation

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.”

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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.”**

In this case a direct lease is proposed with a deviation from paragraph 18 in that a competitive process not be followed as the adherence to this paragraph of the said Policy will not serve a useful purpose, will be costly and most likely will result in the tender having to be cancelled without awarding it as prospective bidders (lessees) will not be willing to enter into a lease agreement, investing money and time for a lease period of 18 (EIGHTEEN) months.

Cognisance should also be had to the fact that should the property be vacant for the period from expiry of the current lease agreement the reality would be that the property would most likely be vandalised resulting in damages, insurance claims to be made and in all likelihood impacting on the time line of the envisaged development.

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 775 Fisherhaven to LMYCB subject thereto that the approval of Council is obtained as to the deviation from paragraphs 18 and 24 of the Policy as requested in this report and further subject to a public

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participation process being followed. An in principle approval for an 18 (EIGHTEEN) month period was obtained.

In this case, seeing that LMYCB has already had agreements for more than 3 years, a further short term lease in respect of the specific portion of Erf 775 Fisherhaven will cause the said total lease period to be in excess of three years, which is not permissible in terms of Paragraph 20 of the Policy if a public participation process is not followed. Should Council approve the deviation of paragraphs 18 and 24 and the Executive Mayor approve the further lease, a public participation process will be followed. Should valid objections be received during the public participation process the matter will be referred back to the Executive Mayor.

Simultaneous with this request for a deviation, a further request will be made for the approval by the Executive Mayor of the long term rental (as the total period will be in excess of three years).

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 lease amount is R12,192.80 (TWELVE THOUSAND ONE HUNDRED AND NINETY TWO RAND AND EIGHTY CENTS) (VAT excluded) for the period from July to December 2018. This current lease amount is the escalated amount of the previous agreements.

A deviation from this paragraph is proposed seeing that the services of a valuer, to determine a new market related rental amount, will be very costly taking into consideration that it is a temporary lease agreement.

The previous agreement stipulated that the lease amount escalate annually by 10%. It is recommended that the last rental amount be escalated by 10% and that the rental amount be determined as follows:

Period	Last Rental	Escalation	Rental Amount	Months
2018/2019 Jan '19 – June '19	R12,192.80	Already escalated in July 2018	R12,192.80	6 months

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22019/2020 July '19 – Jun '20	(R12,192.80 x 2) =R24,385.60	10%	R26,824.16	12 months
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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 LMYCB.

Conclusion

Taking the above into consideration, it is recommended that:

- (a) The Executive Mayor approves the renewal of the lease of a portion of Erf 775 Fisherhaven to LMYCB for a period of 18 (EIGHTEEN) months from 1 January 2019 for the purpose of managing the Lake Marina Yacht and Boat club as well as operating 39 caravan sites for members and related activities at the rental amount of R12,192.80 (TWELVE THOUSAND ONE HUNDRED AND NINETY TWO RAND AND EIGHTY CENTS) (VAT excluded) for the period January 2019 to June 2019 and a rental amount of R26,824.16 (TWENTY SIX THOUSAND EIGHT HUNDRED AND TWENTY FOUR RAND AND SIXTEEN CENTS) (VAT excluded) for the period from July 2019 to June 2020, subject to a public participation process being followed; and
- (b) Council approves the deviation from paragraphs 18 and 24 of the Administration of Immoveable Property Policy of 2015.

7. Financial Implications

The Municipality stands to gain a rental amount of R12,192.80 (TWELVE THOUSAND ONE HUNDRED AND NINETY TWO RAND AND EIGHTY CENTS) (VAT excluded) for the period January 2019 to June 2019 and a rental amount of R26,824.16 (TWENTY SIX THOUSAND EIGHT HUNDRED AND TWENTY FOUR RAND AND SIXTEEN CENTS) (VAT excluded) for the period from July 2019 to June 2020.

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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 8046

As this is an income generating proposal involving the utilisation of a portion of Council Assets while awaiting the conclusion of the proposed tender process pertaining to the development of the Fisherhaven area, there is no objection to the report.

10. Annexures

Annexure A: Locality Map

RECOMMENDATION TO THE EXECUTIVE MAYOR:

1. that the renewal of the lease of municipal property, being a portion of Erf 775 Fisherhaven, to Lake Marina Yacht and Boat Club for the purpose of managing the Lake Marina Yacht and Boat club as well as operating 39 caravan sites for members and related activities for a period of 18 (EIGHTEEN) months from 1 January 2019 at the monthly rental amount of R12,192.80 (TWELVE THOUSAND ONE HUNDRED AND NINETY TWO RAND AND EIGHTY CENTS) (VAT excluded) for the period January 2019 to June 2019 and a rental amount of R26,824.16 (TWENTY SIX THOUSAND EIGHT HUNDRED AND TWENTY FOUR RAND AND SIXTEEN CENTS) (VAT excluded) for the period from July 2019 to June 2020, **be approved**; and
2. that the abovementioned approval be subject to:
 - (a) Council approving a deviation from paragraphs 18 and 24 of the Administration of Immovable Property Policy of 2015;
 - (b) a public participation process being followed; and
 - (c) if any objections to the renewal of the lease agreement or any counter offers are received, the matter be referred back to the Executive Mayor for consideration.

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RECOMMENDATION TO THE COUNCIL:

1. that the deviation from paragraph 18 of the Administration of Immovable Property Policy in order to renew the current lease agreement with Lake Marina Yacht and Boat Club for a further period of 18 (EIGHTEEN) months without following a competitive process, **be approved**; and
2. that the deviation from paragraph 24 of the Administration of Immovable Property Policy in order to renew the current lease agreement with Lake Marina Yacht and Boat Club without having a new market related valuation being done, **be approved**.

RESPONSIBLE OFFICIAL :	M ERASMUS
TARGET DATE FOR IMPLEMENTATION :	31 DECEMBER 2018
TARGET DATE TO INFORM APPLICANT :	22 OCTOBER 2018
TARGET DATE TO INFORM OBJECTOR :	N/A

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7/2/3/1

M Erasmus

(028) 316-3724

Hermanus Administration

13 August 2018

**THIS MATTER SERVED BEFORE THE JOINT PORTFOLIO COMMITTEE ON
19 SEPTEMBER 2018, WHICH COMMITTEE RECOMMENDED AS FOLLOWS:**

RECOMMENDATION TO THE EXECUTIVE MAYOR:

1. that the renewal of the lease of municipal property, being a portion of Erf 775 Fisherhaven, to Lake Marina Yacht and Boat Club for the purpose of managing the Lake Marina Yacht and Boat club as well as operating 39 caravan sites for members and related activities for a period of 18 (EIGHTEEN) months from 1 January 2019 at the monthly rental amount of R12,192.80 (TWELVE THOUSAND ONE HUNDRED AND NINETY TWO RAND AND EIGHTY CENTS) (VAT excluded) for the period January 2019 to June 2019 and a rental amount of R26,824.16 (TWENTY SIX THOUSAND EIGHT HUNDRED AND TWENTY FOUR RAND AND SIXTEEN CENTS) (VAT excluded) for the period from July 2019 to June 2020, **be approved**; and
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2. that the deviation from paragraph 24 of the Administration of Immovable Property Policy in order to renew the current lease agreement with Lake Marina Yacht and Boat Club without having a new market related valuation being done, **be approved**.

RESPONSIBLE OFFICIAL :	M ERASMUS
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