

9.

A PORTION OF ERF 775 FISHERHAVEN: DEVIATION FROM PARAGRAPHS 18, 20.1(b) 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

A Le Roux

Manager: Property Administration

31 March 2020

(028) 316-3724

1. Executive Summary

To obtain approval from the Executive Mayor to enter into a further lease agreement for a period of 7 (SEVEN) months from 1 July 2020 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, 20.1(b) and 24 of the Administration of Immoveable Property Policy of 2015 allowing the Municipality to enter into a further lease agreement for a period of 7 (SEVEN) months from 1 July 2020 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 competitive bidding and public participation processes.

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

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

6. Background/Discussion/Evaluation/Conclusion

Background

LMYBC was formed as a Voluntary Association and has been managing the facilities since August 1977. It was decided that the said property must be made available for development through a competitive process. As the investigation, planning and public meetings regarding the development was still in process a temporary agreement was entered into with LMYCB for an 18 (EIGHTEEN) month period which will expire on 30 June 2020.

The process for the competitive bidding process was commenced with timeously and the tender document was prepared and advertised. Unfortunately due to the lockdown instituted by the President the tender specification meeting could only be held in April 2020. The tender was duly advertised with a closing date of 12 June 2020. This has the effect that the evaluation of the tender will not be finalized by 30 June 2020 when the current lease agreement expires. As the competitive bidding process 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, allowing the Municipality to complete the necessary processes. In this regard the current tenant requested a further renewal period of 1 (ONE) year. It is however recommended that the lease period be only renewed for a period of 7 (SEVEN) months, which should be sufficient to finalise the current tender and provide for a winding down period if they are not successful with their bid.

Discussion

As the process for the competitive bidding process will not be completed before expiry of the current lease agreement, it is recommended that a temporary lease agreement for another 7 (SEVEN) months be entered into with LMYCB subject thereto that Council approves the requested deviations and the Executive Mayor approves the renewal of the lease agreement.

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.”

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 insofar 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 7 (SEVEN) 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 renewal of 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, 20.1(b) and 24 of the Policy as requested in this report. An in principle approval for a 7 (SEVEN) 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. A deviation from paragraph 20.1(b) is also requested as the renewal is for a very short period and the public participation process will be very time consuming. The tender for the long term lease is following a competitive process which entails the advertising of the tender.

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 R29,506.58 (TWENTY NINE THOUSAND FIVE HUNDRED AND SIX RAND AND FIFTY EIGHT CENTS) (VAT excluded) for the period from July 2019 to June 2020. 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:

Current rental (VAT excl.) for a year	R29,506.58
Divided by 12 months to obtain a monthly rental (VAT excl.)	R 2,458.88
Multiply with 7 to obtain rental amount for full period (VAT excl.)	R17,212.16
Escalated by 10% in terms of current lease (VAT excl.)	R18,933.38

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 7 (SEVEN) months from 1 July 2020 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 R18,933.38 (EIGHTEEN THOUSAND NINE HUNDRED AND THIRTY THREE RAND AND THIRTY EIGHT CENTS) (VAT excluded) for the period 1 July 2020 to 31 January 2021; and

- (b) Council approves the deviation from paragraphs 18, 20.1(b) and 24 of the Administration of Immovable Property Policy of 2015.

7. Financial Implications

The Municipality stands to gain a rental amount of R18,933.38 (EIGHTEEN THOUSAND NINE HUNDRED AND THIRTY THREE RAND AND THIRTY EIGHT CENTS) (VAT excluded) for the period as well as services charges.

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 7 (SEVEN) months from 1 July 2020 at the rental amount of R18,933.38 (EIGHTEEN THOUSAND NINE HUNDRED AND THIRTY THREE RAND AND THIRTY EIGHT CENTS) (VAT excluded) for the full period, **be approved**; and
2. that the abovementioned approval be subject to Council approving a deviation from paragraphs 18, 20.1(b) and 24 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 the current lease agreement with Lake Marina Yacht and Boat Club for a further period of 7 (SEVEN) months without following a competitive process, **be approved**;
2. that the deviation from paragraph 20.1(b) 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 7 (SEVEN) months without following a public participation process, **be approved**; and
3. 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 JULY 2020
TARGET DATE TO INFORM APPLICANT :	30 JUNE 2020
TARGET DATE TO INFORM OBJECTOR :	N/A

