

6.

A PORTION OF REMAINDER FARM NR 581 SITUATED IN ONRUSTRIVIER, KNOWN AS “MILK ON THE BEACH RESTAURANT” AT ONRUS BEACH: DEVIATION FROM PARAGRAPH 18 OF THE ADMINISTRATION OF IMMOVABLE PROPERTY POLICY OF 2015 ALLOWING THE MUNICIPALITY TO TEMPORARILY RENEW THE LEASE OF MUNICIPAL PROPERTY TO MILK AT THE BEACH (PTY) LTD

**A Le Roux
24 March 2025**

**Divisional Manager: Property Management
(028) 316 5623**

1. Executive Summary

To obtain approval from the Executive Mayor to enter into a further temporary lease agreement with Milk at the Beach (Pty) Ltd in respect of a portion of Remainder Farm Nr 581 situated in Onrustrivier, ±750m² in extent, for the purpose of managing the restaurant known as “Milk on the Beach” at Onrus Beach, Onrustrivier; 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 temporary lease agreement with Milk at the Beach (Pty) Ltd (the “Lessee”) in respect of a portion of Remainder Farm Nr 581 situated in Onrustrivier for the purpose of managing the restaurant known as “Milk on the Beach” at Onrus Beach, Onrustrivier, without following a competitive bidding process.

2. Service Delivery and Budget Implementation Plan - IGNITE

Planning and Development
Property Management

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

- Local Government: Municipal Financial Management Act (Act 56 of 2003) (“MFMA”)
- Municipal Asset Transfer Regulations (R. 878 of 2008)
- Administration of Immovable Property Policy of the Overstrand Municipality (2015)

6. Background/Discussion/Evaluation/Conclusion

Background/Discussion

Following a call for tenders in 2015, CJ and JC Partnership, was awarded the tender for the lease of a portion of Remainder Farm Nr 581 situated in Onrustrivier for the purpose of managing the Milkwood Restaurant at Onrus Beach, as identified on the locality map attached hereto as "Annexure A" (the "Property") for a period of 9 (NINE) years and 11 (ELEVEN) months. The lease was validly ceded and assigned to the Lessee in December 2021 whereafter the Lessee changed the name of the restaurant to Milk on the Beach.

The current lease agreement will expire on 31 May 2025 and the current lease amount for the lease of the Property is R54,582.08 (FIFTY-FOUR THOUSAND FIVE HUNDRED AND EIGHTY-TWO RAND AND EIGHT CENTS) (VAT Excluded) per month.

The process for the tender for the management of a restaurant and kiosk at Onrus beach was commenced with timeously, however upon receiving the market valuation report for the Property it became clear that the total rental income for the lease period will be in excess of R10,000,000.00 (TEN MILLION RAND). This meant that the process stipulated in Paragraph 19.1 of the Administration of Immovable Property Policy had to be followed, which process entails an additional public participation and in principle approval from Council before the tender specifications can be submitted.

Due to the above additional process, the tender will not be awarded before the expiry of the current lease agreement.

Council approved on 30 October 2024 that the Accounting Officer, via the Property Management Division, be authorised to commence with the public participation process. Subsequently, a notice was published in the Village News on 12 December 2024 and the comments and/or recommendations from National and Provincial Treasury were requested. No comments nor objections were received by closing date.

Council further approved in principle on 26 March 2025 the lease of the Property by means of a competitive process at a market related rental. At the time of writing this report the tender specifications were being finalised for submission to the Supply Chain Division. The latest time frames from Supply Chain regarding the submission and awarding of tenders estimate that the process takes approximately 10 weeks from submission of the tender specifications until the finalisation of the appeal period. After the appeal period the lease agreement must still be entered into.

From the above it is clear that a new lease agreement will not be entered into before the expiry of the existing lease agreement. After the lease agreement

is entered into, the new lessee will also have to apply for the necessary licences, including a liquor licence which can take quite some time.

A temporary renewal of the existing lease agreement will allow the Municipality to follow the necessary procedures, finalise the tender process, have a lease agreement signed and afford the new lessee enough time to plan for the take over as well as apply for all the necessary licences before the new lease agreement commences.

It is further well established that a vacant building attracts vagrants and is prone to vandalism. If the Lease Agreement end 31 May 2025, the building would be vacant and be at risk. The Lessee has done an excellent job of maintaining the Property during the lease period and would continue to do so as its clientele has become used to its standards.

It must further be noted that the Lessee manages and upkeep the public ablution facilities at the Onrus Beach that beachgoers also make use of. Should the lease agreement not be renewed temporarily the management and upkeep of the ablution facility will have to be taken over by the Municipality for the period until the new lessee takes possession of the Property. The management and upkeep of the ablution facility has not been budgeted for. However, if the temporary lease is approved, the Municipality will not incur any costs with regards to the public ablution facilities but will receive a rental income of R54,582.08 (FIFTY-FOUR THOUSAND FIVE HUNDRED AND EIGHTY-TWO RAND AND EIGHT CENTS) (VAT Excluded) per month, which amount will escalate on 1 July 2025 at a percentage equal to the Consumer Price Index. It is thus in the best interest of the Municipality and the public for the lease to be renewed temporary.

It is therefore proposed that the lease agreement be temporarily renewed for a period of 13 (THIRTEEN) months to expire on 30 June 2026. The new lease agreement to be awarded in terms of the tender can then commence with the commencement of the new financial year for 2026/2027.

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, 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 Lessee has an existing lease and the proposal is for a renewal of the lease agreement before its expiry, 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 Property will be made available by means of a tender process for the long-term leasing thereof. The request is that the agreement be renewed for a period of 13 (THIRTEEN) months pending the outcome of the tender to be advertised.

Cognisance should also be had to the fact that should the Property be vacant until the tender process is completed, the Property would most likely be vandalised resulting in damages and insurance claims to be made.

Furthermore, the Property is an important attraction, not only for tourists visiting the area but also the community of the Overstrand Municipality. Should the lease agreement not be renewed it would entail that the restaurant is closed, consequently having a negative economic impact and could be construed as the Overstrand Municipality not using its available resources effectively, efficiently and/or economically as the interest of the community will not be served at best.

It is therefore recommended that the Property be leased directly to the Lessee without following a competitive process for the short term. For audit purposes a lease agreement will in the meantime be entered into

subject to the relevant approvals.

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 Property to the Lessee for a period of 13 (THIRTEEN) months, subject thereto that the approval of Council is obtained as to the deviation from paragraph 18 of the Administration of Immovable Property Policy.

The renewal of the lease will be advertised in the local newspaper, and should any objections be received this matter will be referred back to the Executive Mayor for consideration.

The approval from the Executive Mayor for the renewal of the lease agreement is hereby requested subject to the mentioned deviation 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 initial lease agreement was approved at a rental amount of R35,000.00 (THIRTY-FIVE THOUSAND RAND) (VAT excluded) per month, escalating annually on 1 July by a percentage equal to the Consumer Price Index. The rental amount has escalated annually in terms of the Consumer Price Index and for the 2024/2025 financial year it is R54,582.08 (FIFTY-FOUR THOUSAND FIVE HUNDRED AND EIGHTY-TWO RAND AND EIGHT CENTS) (VAT Excluded). It is recommended that this rental amount be charged for the proposed lease for June 2025 whereafter the amount will increase again on 1 July 2025 with a percentage equal to the Consumer Price Index.

B: Advertisement / Notification:

An advertisement for the temporary renewal of the lease of the Property, will be published in a local newspaper for a 30 (THIRTY) day objection/comment period. Should any objection/comments be received the matter will be referred back to the Executive Mayor for consideration.

Conclusion

Taking the above into consideration, it is recommended that:

- (a) The Executive Mayor approves the temporary renewal of the lease of the Property to the Lessee for a period of 13 (THIRTEEN) months from 1 June 2025 to 30 June 2026 for the purpose of managing a restaurant at Onrus Beach, Onrustrivier, at a rental amount of R54,582.08 (FIFTY-FOUR THOUSAND FIVE HUNDRED AND EIGHTY-TWO RAND AND EIGHT CENTS) (VAT Excluded) per month;
- (b) Council approves the deviation from paragraph 18 of the Administration of Immovable Property Policy in order to renew the current lease agreement with the Lessee for a further temporary period of 13 (THIRTEEN) months without following a competitive process, and
- (c) Should any comments/objections be received during the public participation process the matter be referred back to the Executive Mayor for consideration.

7. Financial Implications

The Municipality stands to gain an income of R54,582.08 (FIFTY-FOUR THOUSAND FIVE HUNDRED AND EIGHTY-TWO RAND AND EIGHT CENTS) (VAT Excluded) per month as well as service charges. The rental will escalate on 1 July 2025 with the percentage equal to the CPI.

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

Divisional Manager: Expenditure, Fleet & Asset Management - Mr J Vorster

“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

- Annexures A: Locality map
Annexure B: Lease drawing

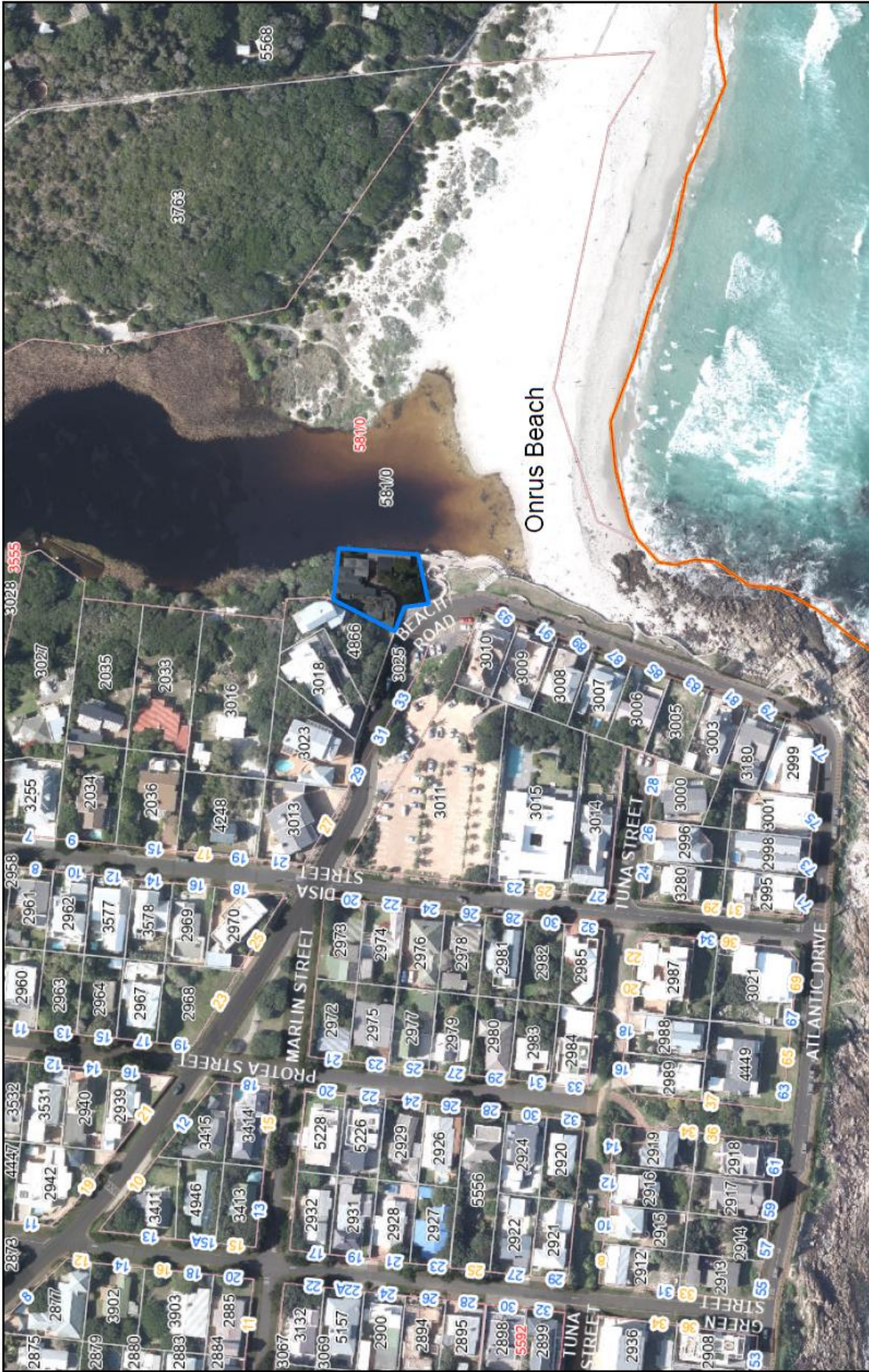
RECOMMENDATION TO THE EXECUTIVE MAYOR:

1. that the temporary renewal of the lease of a portion of Remainder Farm Nr 581 situated in Onrustrivier, $\pm 750\text{m}^2$ in extent, to Milk at the Beach (Pty) Ltd for a period of 13 (THIRTEEN) months from 1 June 2025 to 30 June 2026 for the purpose of managing a restaurant at Onrus Beach, Onrustrivier, at a rental amount of R54,582.08 (FIFTY-FOUR THOUSAND FIVE HUNDRED AND EIGHTY-TWO RAND AND EIGHT CENTS) (VAT Excluded) per month, **be approved**; and
2. that the abovementioned approval be subject to:
 - (a) Council approving a deviation from paragraph 18 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 are received, the matter be referred back to the Executive Mayor for consideration.

RECOMMENDATION TO THE COUNCIL:

that the deviation from paragraph 18 of the Administration of Immovable Property Policy in order to temporarily renew the current lease agreement with Milk at the Beach (Pty) Ltd for a further period of 13 (THIRTEEN) months without following a competitive process, **be approved**.

RESPONSIBLE OFFICIAL :	M ERASMUS
TARGET DATE FOR IMPLEMENTATION :	28 MAY 2025
TARGET DATE TO INFORM APPLICANT :	10 MAY 2025



A portion of Remainder Farm Nr 581 situated in Onrustrivier



ANNEXURE B

Scale: 1: 200

