

7.

**A PORTION OF ERF 5327 AND A PORTION OF 4831, HERMANUS (DE MOND):
LEASE OF MUNICIPAL PROPERTY TO POINT CARAVAN RESORT (PTY) LTD**

SW van der Merwe Senior Town Planner : Town & Spatial Planning

26 July 2024

(028) 313 – 8900

1. Executive Summary

To obtain approval to:

- a) enter into a lease agreement with Point Caravan Resort (Pty) Ltd in respect of municipal property, being a portion of Erf 5327, Hermanus ($\pm 0,70$ ha in extent) and a portion of Erf 4831 Hermanus ($\pm 9,94$ ha in extent) (total lease area of $\pm 10,64$ ha) situated south east of Seventeenth Avenue, Hermanus and south of the R43 towards Stanford, here, hereinafter referred to as “the Property”, for a lease period of 45 (FOURTY-FIVE) years for the lease and development of municipal property as a public resort; and
- b) Deviate from paragraph 40 of the Administration of Immoveable Property Policy to fix the annual escalation rate of the rental to be received at 8% (EIGHT PERCENT).

See the locality map attached hereto marked Annexure “A”.

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

None

5. Legal Requirements

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

6. Background/Discussion/Evaluation/Conclusion

Background/Discussion

The Property, comprising portions of Erf 4831 and 5327 Hermanus, was used as a public resort from the early 1940's. From the early 1990's portions of the Property were let to various lessees who operated different public facilities on thereon. Some of the facilities became permanently occupied with public being excluded from accessing it.

Greater Hermanus Municipality in 1999 commissioned Advocate Werner Zybrands Consultus (Pty) Ltd to investigate "Possible Municipal Partnership for Caravan Parks", which report was submitted to Council on several occasions.

De Mond, Onrustvriër and Hawston caravan parks were investigated.

Various public meetings were held and in 2000 the report made the following findings regarding De Mond, and the following options were identified:

- a) **Retaining status quo by extending the present lease.**
This alternative is not recommended.
- b) **Full privatisation by selling the property.**
This alternative is not recommended.
- c) **Council operation of the resort.**
This only as a short-term option.
- d) **Operation by a community-based organisation.**
This only as an interim measure.
- e) **Granting a concession.**
 - This alternative is recommended although not as an immediate solution.
 - That request for proposal documents be drafted.

A: PROPOSAL CALL 1 – MARCH 2007

The first proposal call was advertised March 2007 before the Municipal Asset Transfer Regulations (2008) ("MATR") were promulgated, thus advertised under the Cape Municipal Ordinance 20 of 1974, where a total of four tenders were received. The tender was awarded to Atterbury Western Cape and an agreement was entered into. Atterbury Western Cape's agreement was cancelled in 2010 citing that this transaction they felt was a Public Private Partnership in terms of Section 120(4) of the Municipal Finance Management Act (56 of 2003).

Council subsequently at a meeting held 24 November 2010 resolved as follows:

“that the Municipal Manager of Overstrand Municipality hereby be authorised and directed to conduct the Feasibility Study required by Section 120(4) of the Municipal Finance Management Act, 2003, No. 56 of 2003 and comply with all applicable statutory and regulatory requirements, including the Public Private Partnership Regulations, and to report the finding of said Feasibility Study and comments thereon to the Council in order that it be able to take a reasoned, deliberate decision in principle on whether to proceed with a proposed Public Private Partnership Agreement.”

Mr. J du Plessis Attorney and Ms. A. Botha of PAMS as specialist consultant on PPP's were appointed to conduct the study in terms of Section 120 of the Municipal Finance Management Act (56 of 2003). Public comments were invited on feasibility study on 1 December 2011 and four comments were received and adequately addressed.

The comments from Provincial and National Treasury were also obtained as required by the MATR, who confirmed that according to them the leasing of De Mond does not constitute a Public Private Partnership, but rather a long-term lease that can be disposed according to the Council Fixed Asset Management Policy.

However, before the next competitive process could commence with, the then occupiers of the Property had to be given notice to vacate and remove their structures, which was done. A few of the people who resided on the Property permanently refused to vacate forcing the Municipality to apply for an eviction order which was granted on 10 December 2012. The remaining occupiers vacated, and the Property was then available for to proceed with the competitive process.

Council then on 27 February 2013 resolved as follows:

- “1. that the comments received on the feasibility study **be noted** and the authors be advised of the Council's decision.*
- 2. that the findings of the feasibility study **be noted** and accepted, and*
- 3. that the municipal properties concerned be made available on a long-term lease basis for development of primarily a public resort in a manner that will secure ecologically sustainable development, promote more equitable access for members of the broader public to municipal resources, socio economic development and optimum use of municipal land in the best interest of the local community.”*

B: PROPOSAL CALL 2 – 28 MARCH 2014

Lyners Consulting Engineers was appointed to assist with preparation of the proposal call documentation. Ms A Botha of PAMS, with assistance of Adv W Zybrands, were included as sub consultants to assist with preparation of proposal call documentation. In addition to the above the following technical reports were also compiled:

- a) Bulk services department – GLS Consulting
- b) Standard for Civil Engineering Services – Overstrand Municipality
- c) Planning Reports – Urban Dynamics
- d) Environmental Report – Withers Environmental Consultants

No tenders were received, and the tender was subsequently cancelled.

C: PROPOSAL CALL 3 – 2 OCTOBER 2014

Only one tender was received. This tender was non-responsive, and the tender was cancelled.

D: PROPOSAL CALL 4 – 31 JULY 2015 AND 12 FEBRUARY 2016

This proposal call consisted of a 2-stage bidding process with the first stage being where interested parties could register and only the registered parties will partake in the second stage, which was the tender proposal. During this process eleven parties registered of which nine remained after the compulsory site visit and briefing session. At the end only three bids were received, and the tender was awarded to Crown Grant JV (Pohl Group).

A lease agreement was entered into on 7 March 2018 between Overstrand Municipality and Pohl Group for a lease period of 45 (FOURTY-FIVE) years, with an initial additional two years (“contract period”), to obtain all relevant approvals, after the tender was successfully awarded to them. The Pohl Group failed to fulfil the suspensive conditions contained in the lease agreement by 1 July 2019. This had the effect that the lease agreement lapsed on 1 July 2019, which the Pohl Group placed in dispute. The matter was referred for mediation and subsequently arbitration (as the mediation was unsuccessful). The arbitration was instituted by the Pohl Group in terms of the lease agreement. The outcome of the arbitration (29 September 2020) was that the lease has lapsed on 1 July 2019 and the property is again available to the Municipality to make available.

E: PROPOSAL CALL 5 – 29 JULY 2022

During a Special Council meeting, dated 26 January 2022, it was resolved as follows:

- “1. that Council request for proposals for the development of the De Mond property; and
2. that a public participation process commence after the proposals have been received.”

The Property was also identified as one of the “Investment Conference” properties to be made available by means of a competitive process. Following various public notices, including the Investment Conference held on 23 and 24 June 2022, eleven people initially registered as

interested parties to partake in any competitive process followed to make the Property available.

The tender for the lease and development of the De Mond Caravan Park as a Public Resort was advertised on 29 July 2022. Four tenders were received, and the tender was subsequently awarded by the Accounting Officer on 4 March 2024 to Point Caravan Resort (Pty) Ltd, hereinafter referred to as "the Lessee", at a rental amount of R117,735.80 (ONE HUNDRED AND SEVENTEEN THOUSAND SEVEN HUNDRED AND THIRTY FIVE RAND AND EIGHTY CENTS (VAT included) per month. The tender and lease agreement make provision for a two-year period before the lease period commences, to start the development and obtain any approvals needed for the development. This has the effect that the Lessee will only be liable for the payment of rental after two years.

A lease agreement was entered into between the Municipality and the Lessee pending the outcome of this approval as requested. The contract period commenced on 1 July 2024 from which date the Lessee takes full responsibility of the Property (i.e. security, maintenance, etc.).

Evaluation

A. Administration of Immovable Property Policy of the Overstrand Municipality

The following conditions of said policy apply:

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".**

As the proposed lease is for a long term with an income value in excess of R10 million, the Property could only be made available by means of a competitive bidding process at a market related rental. A competitive bidding process (i.e. tender) was therefore followed.

Paragraph 19.1: "The Municipality may grant a long-term lease of municipal immovable property with an income value in excess of than R10 million only after:

- a) The Accounting Officer has, though the Property Administration Department, conducted a public participation process; and**

- b) The Municipal Council has approved in principle that the right may be granted.***

Paragraph 19.2: “The public participation process in terms of paragraph 19.1(a) may only be authorised by the Municipal Council. A request to the Municipal Council for authorisation of a public participation process must be accompanied by:

- (a) the reasons for the proposal to grant the long term lease;***
- (b) any expected benefits to the Municipality as a result of the lease;***
- (d) any expected proceeds to be received by the Municipality from the proposed lease, and***
- (e) any expected gain or loss to be realised or incurred by the Municipality arising from the lease.”***

Paragraph 19.3: “If the public participation is authorised, the accounting officer must at least 60 days before the meeting of Council at which the determinations referred to in 19.1(b)(i) and (ii) above are considered

- (a) make public the proposal to lease the asset;***
- (b) invite the local community and other interested parties to submit comments or representations in respect of the proposed lease of the asset;***
- (c) solicit the views and recommendations of the National Treasury and the relevant Provincial Treasury on the matter.”***

Paragraph 19.4: “The Municipal Council must, when considering any proposed lease of municipal immovable property with a value in excess of R10 million, take into account the aspects listed in Regulation 36 of the MATR.”

Council at its meeting on 27 February 2013 approved in principle that the Property may be made available to lease and development as a public resort by means of a competitive process after the public participation process was followed. During the feasibility stage, all the relevant requirements were considered. The comments of National and Provincial Treasury were obtained as required and considered.

As a competitive process was followed there is no need for a further public participation process as the tender was already a form of public participation. However, due to the interest in the process, it is recommended that the public be informed of the outcome of the tender process as to the award made and the decision of Council as to the lease period. This will be done in the form of an advertisement in a local newspaper, at the cost of the Municipality.

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).”

Boland Valuers CC determined the market related rental for the Property on 24 June 2022 at an amount of R0.60/m² (SIXTY CENTS PER SQUARE METRE) (VAT excluded) per month. On an estimated size of 10.64ha, this amounts to R63,840.00 (SIXTY-THREE THOUSAND EIGHT HUNDRED AND FOURTY RAND) (VAT excluded) per month. The bid received was well in excess of the indicative rental contained in the tender document.

Paragraph 40: “Rental, except where it is decided otherwise by the Municipality, shall escalate on the 1st of July every year, by a percentage fixed in accordance with the prevailing consumer price index (all items).”

The tender document made provision for a fixed annual escalation. The lessee offered a fixed escalation rate of 8% (EIGHT PERCENT) which is must higher than the estimated CPI escalation at an average of 4.7% (FOUR POINT SEVEN PERCENT). It is thus requested that Council approves the deviation from paragraph 40 to accept a fixed annual escalation of 8% (eight percent).

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.

Conclusion

Considering the above discussion, it is recommended that:

- a) the lease of the Property to the Applicant be approved for a lease period of 45 (FOURTY-FIVE) years (and a contract period of 47 years) at a rental amount of R117,735.80 (ONE HUNDERD AND SEVENTEEN THOUSAND SEVEN HUNDRED AND THIRTY-FIVE RAND AND EIGHTY

- CENTS (VAT included) per month; and
- b) Council deviates from paragraph 40 of the Administration of Immovable Property Policy (2015) to accept an annual rental increase of 8% (EIGHT PERCENT), with the first escalation on 1 July 2027.

7. Financial Implications

The Municipality stands to gain rental in the amount of R117,735.80 (ONE HUNDRED AND SEVENTEEN THOUSAND SEVEN HUNDRED AND THIRTY-FIVE RAND AND EIGHTY CENTS (VAT included) per month from the commencement date of the lease, being 1 July 2026. Such rental to escalate every year on the 1st of July by 8% (eight percent). All expenses pertaining to the proposed lease will be borne by the Applicant, except for the last advertisement to inform the public of the outcome of the tender award and Council's decision as to the lease period.

The lease agreement provides for an Effective Date of the lease, being 1 July 2024. Point Caravan Resort (Pty) Ltd therefore took occupation and liability of the property including the payment of service charges from 1 July 2024, which will enable the Lessee to obtain the necessary approvals and to comply with the special conditions as contained in the lease agreement.

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

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

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

Divisional Manager: Property Management – Ms A Le Roux

“The process followed, as well as the contents of this report, comply with the Municipality’s Administration of Immovable Property Policy.”

10. Annexures

Annexure A : Locality map

RECOMMENDATION TO THE COUNCIL:

1. that the lease of municipal property, being a portion of Erf 5327 Hermanus ($\pm 0,70$ ha in extent) and a portion of Erf 4831 Hermanus ($\pm 9,94$ ha in extent) (total lease area of $\pm 10,64$ ha in extent) to Point Caravan Resort (Pty) Ltd for the lease, development, management and maintenance of municipal property as a public resort for a lease period of 45 (FOURTY-FIVE) years at an initial rental amount of R117,735.80 (ONE HUNDRED AND SEVENTEEN THOUSAND SEVEN HUNDRED AND THIRTY FIVE RAND AND EIGHTY CENTS (VAT included) per month, in terms of the Administration of Immovable Property Policy of the Overstrand Municipality, **be approved**;
2. that it be noted that provision is made for a period of at the most 2 (TWO) years from 1 July 2024 for the planning and developing on the Property whereafter the 45 (FORTY-FIVE) years will commence and the rental will become payable;
3. that the rental amount mentioned in 1 above escalate every year on the 1st of July with 8% (EIGHT PERCENT) and not CPI as stipulated in the Administration of Immovable Property Policy, the first escalation to be 1 July 2027;
4. that Point Caravan Resort (Pty) Ltd be responsible for all costs relating to the registering of the lease agreement against the title deed of the Property and all associated processes;
5. that Point Caravan Resort (Pty) Ltd enters into a services agreement with the Municipality for the provision of services in terms of the tender, applicable legislation and Council policies; and
6. that a final advertisement for information purposes only be placed at the cost of the Municipality to inform the public of the outcome of the tender award and Council's decision as to the lease period.

RESPONSIBLE OFFICIAL :**S VAN DER MERWE****TARGET DATE FOR IMPLEMENTATION :****17 SEPTEMBER 2024****TARGET DATE TO INFORM APPLICANT :****17 SEPTEMBER 2024****TARGET DATE TO INFORM OBJECTOR :****N/A**

