

6.**A PORTION OF ERF 2467 GANSBAAI (PUBLIC OPEN SPACE) AND A PORTION OF ERF 225 GANSBAAI (PUBLIC ROAD), ADJACENT TO ERF 1110 GANSBAAI (48 PARK STREET): LEASE OF MUNICIPAL PROPERTY TO THE OWNER OF ERF 1110 GANSBAAI****A Le Roux
6 December 2022****Manager: Property Administration****(028) 316 5623**

1. Executive Summary

To obtain approval to enter into a lease agreement with the owner of Erf 1110 Gansbaai, hereinafter referred to as “the Applicant”, in respect of municipal properties being a portion of Erf 2467 Gansbaai (public open space) and a portion of Erf 225 Gansbaai (public road) (jointly ±425m² in extent) situated in Park Street, Gansbaai, hereinafter referred to as “the Properties”, for a period of 9 (NINE) years and 11 (ELEVEN) months for beautification, maintenance of the area, a water tank, wooden fence and gardening purposes. The locality maps are attached hereto as “Annexure A1” and “Annexure A2”.

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**

The Applicant is the owner of Erf 1110 Gansbaai, adjacent to a portion of Erf 2467 Gansbaai and a portion of Erf 225 Gansbaai, and applied to lease the Properties for a period of 9 (NINE) years and 11 (ELEVEN) months for beautification, maintenance of the area, a water tank, wooden fence and gardening purpose.

The Applicant had an encroachment agreement for a portion of Erf 2467 Gansbaai (public open space), adjacent to Erf 1110 Gansbaai ($\pm 70\text{m}^2$ in extent), for a jungle gym and gardening purposes. The encroachment agreement expired on 30 April 2014 and the municipal encroachment levies on the municipal account was stopped thereafter. The Applicant was notified that a new application must be submitted for the existing encroachment.

The Property Administration Department did the necessary site inspection and found that the encroachment was extended by the Applicant, which will be discussed in detail below. The site inspection photographs are attached as "Annexure B".

The Application to lease the Properties on which there are encroachments is described as follows (A & B):

A. Municipal Property: a portion of Erf 2467 Gansbaai ($\pm 295\text{m}^2$ in extent), hereinafter referred to as "Property A"

The existing encroachment is for beautification, maintenance of the area, a water tank structure, wooden fence and for gardening purposes. The encroachment of these structures and the garden have been on the property for a couple of years already and have been incorporated in the Applicant's property by means of the fence.

B. Municipal Property: portions of Erven 225 and 2467 Gansbaai ($\pm 130\text{m}^2$ in extent), hereinafter referred to as "Property B"

The existing encroachment of the garden has been on the property for a couple of years.

Evaluation

A. Administration of Immoveable Property Policy of the Overstrand Municipality

The following conditions of said policy 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.

The Applicant completed the formal application form and paid the application fee.

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 lease is for a long term, the income value will not be close to R10 million. The Properties are not business properties, will not be used as same and cannot be used to generate an income. As the Properties are adjoining the property of the Applicant and as no other application was received for the Properties, considering the size and the fact that the encroachments have been on the Properties for many years without receiving complaints from the public, it is therefore recommended that the Properties be leased directly to the Applicant without following a competitive process.

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.”**

The Accounting Officer (Municipal Manager) approved in principle the lease of the Properties to the Applicant on condition that the public participation process is followed and further subject to the approval from the Executive Mayor.

The proposed lease was advertised in Gansbaai News on 25 November 2022 for a 30 (THIRTY) day comment/objection period.

The Executive Mayor's approval for the long-term lease is hereby sought.

Paragraph 24: “The fair market value for the alienation of, the rental 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).”

HCB Property Valuations, on 1 August 2022, determined the market related monthly rental at an amount of R1.00/m² (ONE RAND PER SQUARE METRE) (VAT Excluded) per month. The valuation was done taking into consideration the size, shape, locality, zoning and proposed use of the Properties. As the Properties are ±425m² in extent the total rent will be approximately R425.00 (FOUR HUNDRED AND TWENTY-FIVE RAND) (VAT excluded) per month.

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.”

The Applicant will pay all costs relating to the advertisement and valuation. No survey was done and therefore no costs were incurred in this regard.

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 Properties 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 Properties was published in Gansberg News on 25 November 2022 for a 30 (THIRTY) day objection/comment period. No objections/comments were received.

Conclusion

Considering the above discussion, it is recommended that the lease of the Properties to the Applicant be approved for a period of 9 (NINE) years and 11 (ELEVEN) months at a rental amount of R425.00 (FOUR HUNDRED AND TWENTY-FIVE RAND) (VAT excluded) per month.

7. Financial Implications

The Municipality stands to gain rental in the amount of R425.00 (FOUR HUNDRED AND TWENTY-FIVE RAND) (VAT excluded) per month, such rental to escalate every year on the 1st of July in accordance with the consumer price index (all items).

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations**Senior Manager: Gansbaai Administration: Mr F Myburgh**

“Favourable consideration of the application is supported.”

Senior Town Planner: Mr S van Der Merwe

“Erf 225 Gansbaai is zoned Transport Zone 2 : Public Road and is defined as follows: “public road” means any highway, road, thoroughfare, lane, footpath, sidewalk, alley, passage, bridge or any other place of a similar nature or any portion thereof serving as a public right of way which is registered in the name of the State or local authority and includes a public street. The scheme provides that the municipality may permit any other related uses as a consent use.

Erf 2467, Gansbaai is zoned Open Space Zone 2 : Public Place and is defined as follows: “public open space” 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.” The applicable primary rights are limited to Public Open Space, whilst the municipality may permit any related other uses as a consent use.

From the GIS it is evident that the applicant developed and maintained the area (both Area A and B) effectively as an extension to the applicant’s

property which is for the sole benefit of the applicant. Both areas (A&B) is situated on public place, namely Public Road and Public Open Space. The current situation is thus a contravention of the Overstrand Municipal Land Use Planning Amendment Bylaw, 2020 not being in accordance with the permissible primary rights. The area utilised by the applicant is the only usable portion of the Erf 2467 for public open space purposes as the remainder primarily functions as a stormwater drainage channel.

No objection is raised to the encroachment of the relevant portion of Area B of Erf 225, subject to consent use from council being obtained.

The renewal of the encroachment pertaining to Area B of Erf 2467 and the lease of Area A to the applicant as per the proposed memorandums dated 20 May 2021 is not supported.

It is recommended that both Area A & B should be dealt with as a single entity for the purposes of a lease or disposal to the applicant provided that the necessary land development approvals were obtained (i.e. approval for subdivision and closure of a portion of public space Erf 2467, Gansbaai, rezoning from Open Space Zone 2 to Residential Zone 1 and consolidation with Erf 1110, Gansbaai)."

Comment from Property Administration Department: A condition will be included in the agreement that the Applicant must attend to necessary land use application.

Senior Superintendent: Traffic Operational: Mr P De Gruchy

"I would just like to know if that service road will not be obstructed if the municipality needs to work on any infrastructure. If the service road behind the Properties is kept open, then there is no objection towards this application from my office."

Comment from Property Administration Department: It can be confirmed that the service road is not obstructed and the Municipality will be able to do repairs to municipal infrastructure.

Senior Manager: Expenditure & Assets, Hermanus: Mr J Vorster

"As this is a revenue generating proposal with no intention to dispose of the asset, there is no objection."

10. Annexures

Annexure A1 & A2: Locality Plan

RECOMMENDATION:

1. that the lease of portions of municipal properties, being a portion of Erf 2467 Gansbaai and a portion of Erf 225 Gansbaai (jointly ±425m² in extent), to the owner of Erf 1110 Gansbaai, for beautification, maintenance of the area, a water tank, wooden fence and gardening purposes at the rental amount of R425.00 (FOUR HUNDRED AND TWENTY FIVE RAND) (VAT excluded) per month for a period of 9 (NINE) years and 11 (ELEVEN) months in terms of the Administration of Immoveable Property Policy of the Overstrand Municipality, **be approved**; and
2. that the rental amount mentioned in 1 above escalate every year on the 1st of July in accordance with the consumer price index (all items), the next escalation to be on 1 July 2023.

RESPONSIBLE OFFICIAL :**W MURTZ****TARGET DATE FOR IMPLEMENTATION :****28 APRIL 2023****TARGET DATE TO INFORM APPLICANT :****14 APRIL 2023****TARGET DATE TO INFORM OBJECTOR :****N/A**





ANNEXURE B

