

9.

A PORTION OF REMAINDER ERF 4771 HERMANUS KNOWN AS THE “NAUTILUS PROPERTY”: DEVIATION FROM PARAGRAPH 18 OF THE ADMINISTRATION OF IMMOVABLE PROPERTY POLICY OF 2015 ALLOWING THE MUNICIPALITY TO ENTER INTO A FURTHER TEMPORARY LEASE AGREEMENT WITH JACKALSVLEI (PTY) LTD FOR SHORT-TERM PERIOD PENDING THE FINALISATION OF THE TENDER PROCESS

**A Le Roux
20 February 2023**

Manager: Property Administration

(028) 316-5623

1. Executive Summary

To obtain approval from Council to deviate from paragraph 18 of the Administration of Immovable Property Policy (as approved by Council on 25 November 2015) allowing the Municipality to enter into another short-term lease agreement with Jackalsvlei (Pty) Ltd (the “Applicant”) for a period of 2 (TWO) months, from 1 March 2023 to 30 April 2023, in respect of a portion of Remainder Erf 4771 Hermanus ($\pm 500\text{m}^2$ in extent) (the “Property”), for the purpose of operating a summer lounge, without following a competitive bidding process.

See attached marked Annexure A the locality map indicating the Property as Site A.

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

None

5. Legal Requirements

- Municipal Asset Transfer Regulations (R. 878 of 2008)
- Administration of Immovable Property Policy of the Overstrand Municipality, as amended

6. Background/Discussion/Evaluation/Conclusion

Background

The Applicant had a short-term lease for the period 1 December 2021 to 30 April 2022 (five months) to operate a summer lounge on the Property in terms of a process which was followed by the Senior Manager: Hermanus Administration, which included the approval of the Municipal Manager. This lease agreement was not renewed by the Municipality as the Municipality was in the position to proceed with the formal tender for the development of the Property. Subsequently the tender for the Lease, Development, Management and Maintenance of a Restaurant on the Property, for a lease period of 25 years was advertised on 5 October 2022 with a closing date of 2 December 2022. As the tender could not be awarded, nor a lease signed, before the start of the festive season the Applicant applied to lease the Property for a temporary period of 3 (THREE) months.

Subsequently Council, on 30 November 2022, approved as follows:

1. *“that the deviation from paragraph 18 of the Administration of Immovable Property Policy (2015) in order to enter into a lease agreement with Jackalsvlei (Pty) Ltd for a short-term period of 3 (THREE) months to lease a portion of Remainder Erf 4771 Hermanus, ±500m² in extent, for the purpose of operating a summer lounge at a total rental amount of R43,502.46 (FOURTY THREE THOUSAND FIVE HUNDRED AND TWO RAND AND FORTY-SIX CENTS) (VAT included) for the period, without following a competitive process, **be approved**; and*
2. *that a condition be included in the lease agreement that the lessee must make use of local labour (as waiters/waitresses/cleaners/etc.) during the period of the lease.”*

Subsequently a lease agreement was entered into with the Applicant which will expire on 28 February 2023.

Discussion

The Applicant applied to lease the Property for another short-term period of 2 (TWO) months from 1 March 2023 to 30 April 2023 for the purpose of a summer lounge as the tender process and subsequent signature of a lease agreement, if awarded, for the development will not be finalised by end of April 2023. The Applicant motivated that the summer lounge can be managed from the Dutchies Restaurant kitchen, which is also managed by them, thus no additional services (water, electricity, etc) will be needed.

The summer lounge is a popular attraction, and it will be advantageous to have tourists attracted to local beaches during the next couple of weeks and to provide the tourists as well as locals with the opportunity of sitting at a summer lounge right on the beach enjoying the beauty Hermanus has to offer.

This will also ensure that the Municipality generates an additional income for this period.

The Municipal Manager approved the further short-term lease of the Property subject to Council's approval for the deviation of Paragraph 18 of the Administration of Immovable Property Policy.

A lease agreement will be entered into subject to the approval of the deviation by Council.

Evaluation

A: Administration of Immovable Property Policy of the Overstrand Municipality:

The following paragraphs of the Administration of Immovable Property Policy are applicable:

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 application for renewal was received before the expiry date there is no application fee 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.”

In this regard the request will be to approve a direct lease as a competitive process for a short-term lease, as was done in the past, will not serve a purpose.

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 intention is to enter into a direct lease with the Applicant for another short-term period of two months pending the outcome of the tender which was advertised on 5 October 2022 – for the long-term lease and development of the Property. As this tender was already advertised, it will not serve a purpose to do another tender for the short-term lease pending the outcome of the current competitive process.

The request is that the short-term agreement be entered into without following a competitive process in order to enhance tourism during the peak season from a property which can be managed properly by the Applicant as an extension of the Dutchies Restaurant. The purpose of the lease will not entail the erection of permanent structures on the Property.

It is accordingly hereby requested that Council approves a deviation from paragraph 18 of the Administration of Immovable Property Policy. It is submitted that a competitive bidding process will not serve the best interests of the community because it will result in there not being a summer lounge for the next few weeks and during Easter Weekend.

Paragraph 21: “Short term lease of municipal immovable property:

- 21.1 The Municipality may grant a short term lease of municipal immovable property up to three years without the option of renewal only after the Accounting Officer has approved the lease in principle.**
- 21.2 Immovable property let according to paragraph 21.1 above need not be advertised in terms of paragraph 10.1 and 10.2 and need not be subsequently approved by the Executive Mayor, but shall be subject to the following:**
 - (a) the lessee shall be responsible for all costs regarding the connection of services, service fees and any other costs associated with the lease;**
 - (b) the Municipality shall, if it is not prescribed that market related rental must be charged, determine the rental;**
 - (c) the lessee shall undertake in writing to compensate the Municipality for damages caused to the immovable property for whatever reason;**
 - (d) the lessee shall indemnify the Municipality against any claims; and**

(e) the Municipality may request proof of financial viability to honour the lease.”

The proposed period is 2 (TWO) months from 1 March 2023 to 30 April 2023. The Applicant will not need to connect any services as the summer lounge will be managed with the assistance and services of the Dutchies restaurant. A formal lease agreement will be entered into, as in the past, which lease agreement will contain the necessary conditions required, including the indemnity clause. The Applicant has managed the summer lounge in the past and has the financial means to manage the summer lounge for a further period.

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).”

As the Applicant submitted an offer during the formal written price quotation process in 2021, it is recommended that, in terms of paragraph 21.2 (b) above, the relevant rental be set as per the amount offered by the Applicant plus an escalation with the consumer price index determined in July 2022. This amount does in any event reflect the market related rental as it is the amount offered by a willing lessee in competition with other lessees. The rental will amount to R14,500.82 (FOURTEEN THOUSAND FIVE HUNDRED RAND AND EIGHTY-TWO CENTS) (VAT included) per month which will be a total rental of R29,001.64 (TWENTY-NINE THOUSAND AND ONE RAND AND SIXTY-FOUR CENTS) (VAT included) for the lease period which rental will be payable in advance with the commencement of the lease.

B: Advertisement/Notification

As this is a short-term lease of 2 (TWO) months it does not need to be advertised.

Conclusion

Taking the above into consideration, it is recommended that Council approves the deviation from paragraph 18 of the Administration of Immovable Property Policy in order to enter into a short-term lease agreement with the Applicant for a period of 2 (TWO) months without following a competitive process.

7. Financial Implications

The Municipality stands to gain a rental amount of R29,001.64 (TWENTY-NINE THOUSAND AND ONE RAND AND SIXTY-FOUR CENTS) (VAT included) for the lease period.

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 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

Annexure A: Locality Map

RECOMMENDATION TO THE COUNCIL:

1. that the deviation from paragraph 18 of the Administration of Immovable Property Policy (2015) in order to enter into a lease agreement with Jackalsvlei (Pty) Ltd for another short-term period of 2 (TWO) months to lease a portion of Remainder Erf 4771 Hermanus, ±500m² in extent, for the purpose of operating a summer lounge at a total rental amount of R29,001.64 (TWENTY-NINE THOUSAND AND ONE RAND AND SIXTY-FOUR CENTS) (VAT included) for the period, without following a competitive process, **be approved**; and
2. that a condition be included in the lease agreement that the lessee must make use of local labour (as waiters/waitresses/cleaners/etc.) during the period of the lease.

RESPONSIBLE OFFICIAL :

M ERASMUS

TARGET DATE FOR IMPLEMENTATION :

15 MARCH 2023

TARGET DATE TO INFORM APPLICANT :

15 MARCH 2023

TARGET DATE TO INFORM OBJECTOR :

N/A

ANNEXURE A

