

7.

A PORTION OF REMAINDER FARM NO. 581 ONRUSTRIVIER (NEXT TO BERGHOF ESTATE, ONRUSTRIVIER): DEVIATION FROM PARAGRAPH 18 OF THE ADMINISTRATION OF IMMOVABLE PROPERTY POLICY OF 2015 ALLOWING THE MUNICIPALITY TO ENTER INTO A FURTHER LEASE AGREEMENT WITH MAST SERVICES (PTY) LTD

**A Le Roux
5 April 2024**

Manager: Property Administration

(028) 316-5623

1. Executive Summary

To obtain approval from the Executive Mayor to enter into a further lease agreement for a period of 9 (NINE) years and 11 (ELEVEN) months with Mast Services (Pty) Ltd ("Mast Services") in respect of a portion of Remainder Farm no. 581 Onrustrivier, ±70,7m² (APPROXIMATELY SEVENTY COMMA SEVEN SQUARE METRES) in extent, situated next to Berghof Estate, Onrustrivier, hereinafter referred to as "the Property", for the purpose of retaining the existing mast and related infrastructure for telecommunication purposes; 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 direct lease agreement with Mast Services in respect of the Property to retain an existing mast for telecommunication purposes, without following a competitive process.

See Locality maps attached marked Annexures "A1" and "A2".

2. Service Delivery and Budget Implementation Plan - IGNITE

Investment and Infrastructure
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 Immovable Property Policy of the Overstrand Municipality, as amended

6. Background/Discussion/Evaluation/Conclusion

Background

Vodacom entered into a lease agreement with the Municipality for the lease of Unregistered Erf 5551 Onrustvriër for the purpose of installing a cellular communications base station comprising of a 15m lattice mast with antennae, equipment containers within an enclosure. Erf 5551 was subdivided for the lease of the property to Vodacom and the Surveyor General approved subdivision S.G diagram no. 10/2015, but the diagram was not registered in the Deeds Office with the result that the conditions of the for the subdivision lapsed. As the subdivision to create Erf 5551 was a portion of the Remainder Farm No. 581 Onrustvriër, the renewal will thus be on the latter property.

The Executive Mayor, in 2023, approved the cession of the lease agreements from Vodacom to TowerCo. During the process of finalising the cession agreements for signature, Vodacom registered a new company in the name of Mast Services (Pty) Ltd which will now, as subsidiary of Vodacom, hold some of the telecommunication-related assets of Vodacom. Vodacom will remain closely invested in the success of Mast Services.

Vodacom therefore applied to cede the existing above mentioned lease agreement with the Municipality to Mast Services (Pty) Ltd instead of to TowerCo as previously requested. The Executive Mayor on 27 March 2024 approved the cession of the lease agreement from Vodacom to Mast Services.

The last lease agreement, which was for a period of 9 (NINE) years and 11 (ELEVEN) months, expired on 28 February 2024 and Mast Services applied for the renewal in time and the renewal process was also commenced with by the Property Administration Department in time. Unfortunately, due to the registration of the new company, and the municipal account being in arrears, the renewal process could not be finalised before the expiration of the previous agreement. The Property Administration Department had to wait for the municipal account being paid in full and approval of the cession before the renewal process could be continued with. The arrear account was caused by Mast Services paying a lump sum every month and not indicating clearly to which accounts the payment must be allocated to. This problem was addressed with them.

Mast Services applied to renew the lease agreement as there is a high increase in the demand for reception and in this case the application is only to retain the existing mast situated on municipal property.

Evaluation

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

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”.**

Although the application is for a long-term the rental will not be in excess of R10 million. The site is not classified as nor zoned as a business site and the site is situated on a water reservoir which is not suitable for any other activities.

In this case a direct lease is proposed with a deviation from paragraph 18 in that a competitive process not be followed.

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 Municipal Manager approved in principle the long-term lease of the Property for a period of 9 (NINE) years and 11 (ELEVEN) months, subject thereto that the approval of Council is obtained for the deviation from paragraph 18 of the Administration of Immovable Property Policy and the public participation process being followed.

The proposed renewal of the lease agreement was advertised in the Village News on 19 January 2024 for a 30 (THIRTY) day comment/objection period. No comments/objections were received.

Paragraph 26: *“In cases where a rental amount has been approved in the annual budget of the Municipality for certain types of leases and encroachments, the approved amount will be used for purposes of determining the rental amount.”*

The tariff for the lease of municipal property with a mast, is applicable.

The tariff for the lease of municipal property with a mast is R81.74/m² (EIGHTY-ONE RAND AND SEVENTY-FOUR CENTS) (VAT excluded) per square metre per month for the 2023/2024 financial year. The lease area is ±70,7m² (SEVENTY COMMA SEVEN) square metres in extent and the monthly rental calculates to a total amount of R5,779.02 (FIVE THOUSAND SEVEN HUNDRED AND SEVENTY-NINE RAND AND TWO CENTS) (VAT excluded) per month. The agreement will stipulate that the rental amount will escalate annually in accordance with the tariff as approved in the Annual Budget.

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 will be included in the lease agreement entered into with Mast Services.

B. Advertisement/Notification

Mast Services will pay all costs relating to the renewal of the lease agreement which in this case so far is only the advertisement costs.

Conclusion

Taking the above into consideration, it is recommended that:

- (a) The Executive Mayor approves the renewal of the lease of municipal property, being a portion of Remainder Farm No. 581 Onrustrivier ($\pm 70,7\text{m}^2$ in extent), to Mast Services (Pty) Ltd as from 1 March 2024 to retain an existing mast and related infrastructure for telecommunication purposes at the rental amount of R81.74/m² (EIGHTY ONE RAND AND SEVENTY FOUR CENTS) (VAT excluded) quare metre per month which amounts to R5,779.02 (FIVE THOUSAND SEVEN HUNDRED AND SEVENTY NINE RAND AND TWO CENTS) (VAT excluded) per month, for a period of 9 (NINE) years and 11 (ELEVEN) months subject to Council approving a deviation from paragraph 18 of the Administration of Immovable Property Policy
- (b) Council approves a deviation from paragraph 18 of the Administration of Immovable Property Policy, in order to enter into a direct lease with Mast Services (Pty) Ltd without following a competitive process.

7. Financial Implications

The Municipality stands to gain a rental amount of R81.74/m² (EIGHTY ONE RAND AND SEVENTY FOUR CENTS) (VAT excluded) quare metre per month which amounts to R5,779.02 (FIVE THOUSAND SEVEN HUNDRED AND SEVENTY NINE RAND AND TWO CENTS) (VAT excluded) per month, where after the lease amount will escalate every year on the 1st of July in accordance with the tariffs stipulated in the Annual Budget as approved by Council, the next escalation to be on 1 July 2024. All expenses pertaining to the proposed lease will be borne by Mast Services.

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

Town Planner - Mr. Henk Olivier

"No objection to the extension of the lease."

Senior Manager: Expenditure and Assets – Mr. J Vorster

"As this is an income generating proposal, with no intention of selling the asset, there is no objection against the application".

10. Annexures

Annexures A1 & 2: Locality Maps

RECOMMENDATION TO THE EXECUTIVE MAYOR:

1. that the lease of municipal property, being a portion of Remainder Farm No. 581 Onrustrivier ($\pm 70,7\text{m}^2$ in extent), to Mast Services (Pty) Ltd to retain an existing mast and related infrastructure for telecommunication purposes at the rental amount of R81.74/m² (EIGHTY ONE RAND AND SEVENTY FOUR CENTS) (VAT excluded) square metre per month which amounts to R5,779.02 (FIVE THOUSAND SEVEN HUNDRED AND SEVENTY NINE RAND AND TWO CENTS) (VAT excluded) per month for a period of 9 (NINE) years and 11 (ELEVEN) months from 1 March 2024 in terms of the Administration of Immovable 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 tariffs stipulated in the Annual Budget as approved by Council, the next escalation to be on 1 July 2024.

RECOMMENDATION TO THE COUNCIL:

that the deviation from paragraph 18 of the Administration of Immovable Property Policy allowing a direct lease to Mast Services (Pty) Ltd of a portion of Remainder Farm No. 581 Onrustrivier ($\pm 70,7\text{m}^2$ in extent), to retain an existing mast and related infrastructure for telecommunication purposes, **be approved**.

RESPONSIBLE OFFICIAL :	R OCTOBER
TARGET DATE FOR IMPLEMENTATION :	5 JUNE 2024
TARGET DATE TO INFORM APPLICANT :	12 JUNE 2024
TARGET DATE TO INFORM OBJECTOR :	N/A



