

9.**COVID-19 ARRANGEMENTS****THE “SEATS ON THE STREETS” CAMPAIGN: DEVIATION FROM SEVERAL PARAGRAPHS OF THE ADMINISTRATION OF IMMOVABLE PROPERTY POLICY OF 2015 AND EXEMPTION FROM THE PAYMENT OF RENTAL**

7/2/3/1

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16 November 2020

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1. Executive Summary

The purpose of the report is to present Council with a request to assist restaurants during the “Seats on the Streets” campaign which will be for an initial period from 16 December to 15 January 2021 with a possible extension to 15 April 2021 by:

- (a) deviating from Tariff S34G2: Lease of Municipal land for outdoor seating adjoining a Restaurant (per m² per month) as approved in the annual budget for the 2020/2021 financial year as to all the applications approved under the “Seats on the Streets” campaign;
- (b) exempting the tenants of the Municipality as indicated in Annexure A hereto from the payment of rental for the period “Seats on the Streets” campaign will run; and
- (c) deviating from paragraphs 4, 21.2(a), 21.2(b), 21.2(e), 26 and 41 of the Administration of Immovable Property Policy of 2015 should the initial period of 16 December 2020 to 15 January 2021 for the campaign be extended to 15 April 2021.

2. Service Delivery and Budget Implementation Plan - IGNITE

Directorate Finance
Department Revenue

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

Administration of Immovable Property Policy of the Overstrand Municipality, as amended (“AIP”)
Local Government: Municipal Finance Management Act, Act 56 of 2003 (“MFMA”)

6. Background/Discussion/Evaluation/Conclusion**Background/Discussion**NATIONAL STATE OF DISASTER

As all are aware, the National State of Disaster was once again extended with a month up to 15 December 2020 under lockdown level 1 with no indication of whether it will again be extended after the said date. Under this extension the regulations were amended to make provision for the partial re-opening of borders subject to conditions and requirements. The amended regulations determine, amongst others, that:

- “75(1) The 18 land borders which were partially operational, will be fully operational, and the 34 land borders which were closed, will remain closed.*
- (2) Traveling to and from the Republic is allowed.”*

The amendment of the regulations as mentioned above, will have the effect of an influx of tourists to the Overstrand area, which is evident from the full bookings at, amongst others, guesthouses, etc. The problem that is foreseen, is that the local restaurants will not be able to accommodate customers to its full capacity. This is mainly due to the restrictions imposed in the Regulations issued in terms of the Disaster Management Act, 2002, under Alert Level 1 as to social distancing. The relevant regulation stipulates as follows:

“69. Gatherings

- (1) Every person, when attending a gathering and in order to limit exposure to COVID -19 must - (a) wear a face mask;*
(b) adhere to all health protocols;
(c) maintain a distance of at least one and a half metres from each other; and
(d) adhere to any other health protocols and social distancing measures as provided for in directions issued by the relevant Cabinet member after consultation with the Cabinet member responsible for health.
- (2) An owner or operator of any indoor or outdoor facility where gatherings are held must display the certificate of occupancy which sets out the maximum number of persons the facility may hold.*
- (12) Gatherings at the following places are allowed, subject to the limitations as set out below –*
(a) restaurants, subject to strict adherence to directions on the times of operation, the number of persons, health protocols and social distancing measures, as provided for in the directions that must be issued by the relevant Cabinet

*member, after consultation with the Cabinet member responsible for health;
Provided that this percentage may be increased as provided for in the directions issued by the relevant Cabinet member.”*

“SEATS ON THE STREETS CAMPAIGN”

In order to afford restaurants the opportunity to accommodate more patrons during the festive season while having to adhere to strict regulations regarding social distancing, etc., the “Seats on the Streets” campaign was introduced, which campaign is to run for the period 16 December 2020 until 15 January 2021 (one month) with a possible extension to 15 April 2021. This campaign will allow all restaurants in the Overstrand to apply for a consent to place tables and chairs for restaurant purposes onto road reserves or public places adjoining their respective restaurants to maximise the use of the mentioned areas without disrupting or obstructing parking, as well as pedestrian and traffic flow. This is also to assist them with some relief from the financial burden COVID19 has placed on them.

This is the same as is done with our current lease agreements where restaurants in, amongst others, the Old Harbour area are accommodated. What must however be noted, is that each application received, by no later than 11 December 2020, will be considered on its own merits in specifically ensuring that should it be approved, it does not obstruct traffic and/or pedestrian flow especially in areas where the walkways are already narrow. In some cases, areas applied for might be reduced in size in order to ensure that traffic and pedestrian flow is not obstructed and with some applications alternative, but suitable to the restaurant, will be identified and allocated. Unfortunately, there might be some applications that cannot, after a thorough investigation, be approved as it will contravene by-laws. However, every possibility will be investigated first before an application is denied.

DEVIATIONS NECESSARY

a) Rental payable

This campaign will however not be successful if the Municipality insists that the restaurant owners pay the monthly rental of R36.00/m² (thirty-six rand per square metre) (VAT included), as approved in the Annual Budget for the 2020/2021 financial year as well as the application fee as required by the AIP. Thus, a deviation will be requested in this regard and if approved, lease agreements will not be entered into with each restaurant owner and instead consents to use will be issued, subject to conditions. Although the use of municipal property for a period up to 1 (one) month is excluded from the application of the AIP, the tariffs are still applicable. Thus, Council will have to consider a deviation from the tariffs as approved for these types of rentals.

b) Extending the campaign to 15 April 2021

As there is a possibility that this campaign might be extended for a further period in excess of one month, the AIP will become applicable. Although it was mentioned in the press that the campaign might be extended to 5 April 2020 (depending on several factors and circumstances), it might be good, for administrative purposes also, to rather consider extending the campaign to 15 April 2021. To save time and to be pro-active, approval will be requested now to deviate from several conditions of the AIP to accommodate the possibility to extend the period of the "Seats on the Street" campaign. The relevant conditions entail the payment of application fees and services charges, etc. as more fully discussed below.

CURRENT TENANTS

If Council approves the request that no rental be paid by the restaurants partaking in the campaign with the consent of the Municipality, then this should in all fairness also be extended to tenants of the Municipality who leases municipal land or who are in the process of signing lease agreements for outdoor seating for restaurant purposes during this period (note that the lease agreement is entered into with the landlord of the restaurant). The affected restaurants are:

	<u>Tenant</u>	<u>Restaurant</u>	<u>Area</u>	<u>Rental (Exl VAT)</u>
i)	KEE Property Investments (Pty)(Ltd)	Various (Village Square Piazza)	Hermanus	R21,983.24
ii)	KEE Property Investments (Pty) Ltd	Simply Asia & Oscars	Hermanus	R 1,940.60
iii)	LF Frew	Tosca Restaurant	Hermanus	R 354.84
iv)	Ingwesec (Pty) Ltd	Burgundy Restaurant	Hermanus	R 1,878.00
v)	Onrus Vermont Estate Agency (Pty) Ltd	Rossi's	Hermanus	R 125.20
vi)	Joshgro Investments 9 (Pty) Ltd	Old Col'Cacchio, now Ocean Basket	Hermanus	R 5,008.00
vii)	S van Niekerk	Kuslang's	Franskrhaalstrand	R 319.26

EvaluationAdministration of Immovable Property Policy of the Overstrand Municipality

The following conditions of said policy apply to this report:

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, subdivision, consolidations, advertisement, relocation or provision of services and, where applicable, a deposit as per prescribed rate to cover incidental costs has been paid.”

This condition is applicable should the use be for a period longer than 1 (one) month. Due to the short term nature of the proposed use of municipal properties and the amount of applications received so far, and as the main goal is to assist the restaurants who have already been financially affected by COVID19, it is requested that the payment of an application fee be waived.

Furthermore, the intention is not to enter into lease agreements, but to issue consents to trade should the Council approve the request to waive the payment of rental.

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.”

This condition is applicable should the use be for a period longer than 1 (one) month (thus extended to 15 April 2021).

Although the proposed use of the municipal properties is of a business nature, the properties are zoned as public place or public road respectively. The intention is to make small portions of municipal properties available for the use by the adjoining restaurant owner only. This means that it will not be of a practical use to anyone else for restaurant purposes and due to the short term of the use, a competitive process will not be cost effective.

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.*

The Accounting Officer has on 16 November 2020 instructed that the report serve before Council in order to assist the local restaurants. Thus, he has in fact approved the campaign, subject to Council's approval of the deviations needed. Although not a lease as referred to in the AIP, it is still a request for the short-term use that must be approved by the Accounting Officer. Each application will be brought to the attention of the Accounting Officer.

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.***

No fees will be payable for the connection of services and associated costs as the restaurant owners will make use of their own facilities to serve the allocated portion of municipal property. It is requested that the payment of rental be waived as discussed below. The Municipality will not request any proof of financial viability but will ensure that the conditions regarding indemnity and compensation for damages be included in the consent.

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 approved rental for outdoor seating for restaurant purpose is R36/m² (thirty-six rand per square metre) (VAT included).

The main purpose of this campaign is to assist already struggling restaurants in the Overstrand during the peak season and secondly to enable them to accommodate the influx of tourists to the Overstrand. With the current regulations under Alert Level 1, the restaurant owners are limited as to how

many patrons they can accommodate in the restaurant. In giving them consent to trade outside their demarcated restaurant onto municipal property, they will be able to accommodate as many as possible patrons, which will promote tourism. If a rental is charged for this, it will defeat the purpose of the campaign insofar the restaurants will be burdened further financially.

Paragraph 41: *The lessee shall, as a rule, be liable for the payment of rates, taxes and service charges in respect of the leased property. In the case of leases to certain social care users and sports facilities at rentals lower than market value the Municipality may consider granting a rebate on rates in accordance with the Rates Policy of the Municipality.*

No rates, taxes and service charges will be applicable to the portions of municipal properties identified and allocated under the consent. As it is requested that no rental be charged, it is requested that Council deviates from this condition also.

Conclusion

Taking the above into consideration, the following is recommended to Council as a once-off approval:

- (d) to deviate from Tariff S34G2: Lease of Municipal land for outdoor seating adjoining a Restaurant (per m² per month) as approved in the annual budget for the 2020/2021 financial year as to all the applications approved under the "Seats on the Streets" campaign;
- (e) to exempt the tenants of the Municipality as indicated in Annexure A hereto from the payment of rental for the period "Seats on the Streets" campaign will run; and
- (f) to deviate from paragraphs 4, 21.2(a), 21.2(b), 21.2(e), 26 and 41 of the Administration of Immovable Property Policy of 2015 should the campaign be extended beyond 15 January 2021 up to and including 15 April 2021.

7. Financial Implications

A total loss in rental income on the current tenants of the Municipality as indicated in Annexure A hereto is:

	<u>Tenant</u>	<u>Rental (Excl VAT) one month</u>	<u>Rental (Exl VAT) (4 months)</u>
i)	KEE Property Investments (Pty)(Ltd)	R 21,983.24	R 87,932.96
ii)	KEE Property Investments (Pty) Ltd	R 1,940.60	R 7,762.40
iii)	LF Frew	R 354.84	R 1,419.36
iv)	Ingwesec (Pty) Ltd	R 1,878.00	R 7,512.00
v)	Onrus Vermont Estate Agency (Pty) Ltd	R 125.20	R 500.80
vi)	Joshgro Investments 9 (Pty) Ltd	R 5,008.00	R 20,032.00
vii)	S van Niekerk	R 319.26	R 1,277.04

AGENDA OF THE MAYORAL COMMITTEE MEETING: 25 NOVEMBER 2020

	R 31,609.14	R126,436.56
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The loss of rental income for the applications which must still be approved cannot be calculated at this stage as all applications with sizes applied for have not been received yet. It should however also be noted that the loss in rental income will not impact on the budget since rental income with regard to the particular circumstances, was not projected and budgeted for.

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

None

10. Annexures

Annexure A: List of tenants to be exempted

RECOMMENDATION TO THE COUNCIL:

1. that the deviation from Tariff S34G2: "Lease of Municipal land for outdoor seating adjoining a Restaurant (per m2 per month)" as approved in the annual budget for the 2020/2021 financial year in relation to all the applications approved under the "Seats on the Streets" campaign **be approved**;
2. that exemption from the payment of rentals by the tenants of the Municipality as indicated in Annexure A hereto for the period "Seats on the Streets" campaign will run **be approved**; and
3. that, should the "Seats on the Streets" campaign be extended to and including 15 April 2021, the deviation from paragraphs 4, 21.2(a), 21.2(b), 21.2(e), 26 and 41 of the Administration of Immovable Property Policy of 2015, **be approved**.

RESPONSIBLE OFFICIAL :

**A LE ROUX
E HOONEBERG**

TARGET DATE FOR IMPLEMENTATION :

11 DECEMBER 2020

TARGET DATE TO INFORM APPLICANT :

N/A

TARGET DATE TO INFORM OBJECTOR :

N/A

ANNEXURE A

<u>Tenant</u>	<u>Account number</u>
i) KEE Property Investments (Pty)(Ltd)	900000447031
ii) KEE Property Investments (Pty) Ltd	900000447567
iii) LF Frew	900000192690
iv) Ingwesec (Pty) Ltd	900000550700
v) Onrus Vermont Estate Agency (Pty) Ltd	201000048106
vi) Joshgro Investments 9 (Pty) Ltd	900000206157
vii) S van Niekerk	900000478864