

7.

A PORTION OF REMAINDER ERF 249 HERMANUS: RENEWAL OF LEASE OF MUNICIPAL PROPERTY TO STONEWATER HOLDINGS (PTY) LTD

7/2/3/1

M Erasmus ACTING MANAGER: PROPERTY ADMINISTRATION**12 October 2021****(028) 316 5602**

1. Executive Summary

To obtain approval to enter into a further lease agreement with Stonewater Holdings (Pty) Ltd, in respect of a portion of Remainder Erf 249 Hermanus situated at 2 Harbour Road, Westcliff, Hermanus for a period of 3 (THREE) years for the retention of a balcony for restaurant outdoor seating purposes. The locality map is attached hereto as "Annexure A".

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**

BBBM Beleggings (Pty) Ltd had an encroachment agreement with the Municipality for a period of 5 (FIVE) years for a balcony over municipal property, being a portion of Remainder Erf 249 Hermanus.

BBBM Beleggings (Pty) Ltd sold their property to Stonewater Holdings (Pty) Ltd in 2018. Stonewater Holdings (Pty) Ltd applied for retention of the balcony in 2018 as they will keep on using the balcony for outdoor restaurant seating purposes.

The balcony is used for outdoor seating for restaurant purposes and previously these type of applications were dealt with as an encroachment, but since the amendment of the Administration of Immoveable Property Policy, the placing and tables and chairs for outdoor seating is dealt with as a lease agreement for which a tariff is approved in the annual financial budget of the Municipality.

On 4 January 2019 Stonewater Holdings (Pty) Ltd entered into a lease agreement with the Municipality for a period of 3 (THREE) years from 1 January 2019 until 31 December 2021, for the retention of the balcony for the purpose of outdoor restaurant seating.

Stonewater Holdings (Pty) Ltd applied for the further lease of the property for a further period of 3 (THREE) years. No complaints were received from the community during the previous lease periods. The municipal account is paid up to date.

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.”

As the application for renewal was received before the expiry of the last agreement there is no need for a formal application form to be completed and no application fee is 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”.

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 proposed lease is for a long term period the rental that will be received will not be in excess of R10 million as the rental charged will be in accordance with the tariffs approved in the Annual Budget for lease of municipal land for outdoor seating adjoining a restaurant for the specific financial year. Currently the rental amount is R586.98 (FIVE HUNDRED AND EIGHTY SIX RAND AND NINETY EIGHT CENTS) (VAT excluded) per month.

The balcony was built many years ago and it can not be utilised by any other person and therefore it is recommended that the property be leased directly to Stonewater Holdings (Pty) Ltd.

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.”**

Stonewater Holdings (Pty) Ltd applied for the renewal of the lease agreement which was approved in principle by the Municipal Manager on 16 August 2021 for a period of 3 (THREE) years, subject to a public participation process being followed and further subject to the approval by the Executive Mayor as delegated authority of the long term lease.

The Executive Mayor’s approval is hereby sought, and the proposed lease was advertised in The Village News on 25 September 2021 for a 30 (THIRTY) day comment/objection period. No objections have been 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 for outdoor seating adjoining a restaurant is R32.61/m² (THIRTY TWO RAND AND SIXTY ONE CENTS) (VAT excluded) per square metres per month for the 2021/2022 financial year. The lease area is ±18m² (EIGHTEEN) square metres in extent and the monthly rental calculates to an amount of R586.98 (FIVE HUNDRED AND EIGHTY SIX RAND AND NINETY EIGHT 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 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.”*

Stonewater Holdings (Pty) Ltd will be liable for the payment of all costs relating to the renewal of the lease agreement which in this case so far is only the advertisement costs.

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.

B. Advertisement/Notification

An advertisement for the lease of a portion of Remainder Erf 249 Hermanus was placed in The Village News on 25 September 2021 for a 30 (THIRTY) day objection/comment period. No objection/comment was received.

Conclusion

With reference to the above discussion it is recommended that the lease of a portion of Remainder Erf 249 Hermanus to Stonewater Holdings (Pty) Ltd be approved for a further period of 3 (THREE) years from 1 January 2022 at a

rental amount of R586.98 (FIVE HUNDRED AND EIGHTY SIX RAND AND NINETY EIGHT CENTS) (Vat excluded) per month for the 2021/2022 financial year to be escalated annually in accordance with applicable tariffs.

7. Financial Implications

The Municipality stands to gain rental in the amount of R586.98 (FIVE HUNDRED AND EIGHTY SIX RAND AND NINETY EIGHT CENTS) (Vat excluded) per month from 1 January 2022 where after the rental amount will escalate annually on 1 July in accordance with the tariffs stipulated in the Annual Budget as approved by Council, next escalation to be on 1 July 2022. All expenses pertaining to the proposed lease will be borne by Stonewater Holdings (Pty) Ltd.

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

Senior Town Planner: Ms H van der Stoep– (028) 313 8900

“No objection.”

Senior Manager: Expenditure & Assets, Hermanus – J Vorster 028 313 8046

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

10. Annexures

Annexure A: Locality Plan

RECOMMENDATION:

1. that the lease of municipal property, being a portion of Remainder Erf 249 Hermanus ($\pm 18\text{m}^2$ in extent), to Stonewater Holdings (Pty) Ltd, for the retention of a balcony for outdoor restaurant seating purposes at a rental amount of R586.98 (FIVE HUNDRED AND EIGHTY SIX RAND AND NINETY EIGHT CENTS) (VAT excluded) per month for a period of 3 (THREE) years from 1 January 2022 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 annually on 1 July in accordance with the tariffs stipulated in the Annual Budget as approved by Council.

RESPONSIBLE OFFICIAL :	R OCTOBER
TARGET DATE FOR IMPLEMENTATION :	30 NOVEMBER 2021
TARGET DATE TO INFORM APPLICANT :	15 NOVEMBER 2021
TARGET DATE TO INFORM OBJECTOR :	N/A

ANNEXURE A

