

10.**A PORTION OF REMAINDER ERF 4771 HERMANUS: LEASE OF MUNICIPAL PROPERTY TO JUSTEA (PTY) LTD****A Le Roux****Divisional Manager: Property Management****30 September 2024****(028) 316 - 5623**

1. Executive Summary

To obtain approval to enter into a lease agreement with Justea (Pty) Ltd in respect of municipal property, being a portion of Remainder Erf 4771 Hermanus ($\pm 906\text{m}^2$ in extent) situated at Grotto Beach, Hermanus known as "Dutchies Restaurant" hereinafter referred to as "the Property", for a period of 9 (NINE) years and 11 (ELEVEN) months for the lease, management and maintenance of municipal property as a restaurant. See the locality maps attached hereto marked Annexure "A1 & A2".

2. Service Delivery and Budget Implementation Plan - IGNITE

Planning and Development
Property Management

3. Compliance with Strategic Priority

Provision of democratic, accountable and ethical governance

4. Delegated Authority

None

5. Legal Requirements

- Municipal Asset Transfer Regulations (R. 878 of 2008)
- Administration of Immovable Property Policy of the Overstrand Municipality (2015)

6. Background/Discussion/Evaluation/Conclusion**Background**

The previous lease of the Property was with Tasoclox (Pty) Ltd for the purpose of managing a restaurant. This lease agreement was renewed on several occasions, the last renewal ending on 30 June 2024. These renewals were approved pending the finalisation of the tender specification documents and subsequent outcome of the competitive bidding process. Tasoclox (Pty) Ltd is still in possession of the Property.

Discussion

The Accounting Officer (Municipal Manager) approved in principle on 10 November 2023 that the competitive process for the lease, management and maintenance of the Property as a restaurant at a market related rental amount for a lease period of 9 (NINE) years and 11 (ELEVEN) months be commenced with. The market related rental amount as contained in the tender document, and as obtained from a registered professional valuer was R35,650.00 (THIRTY-FIVE THOUSAND SIX HUNDRED AND FIFTY RAND) (VAT included) per month.

Tenders were duly invited and on 14 June 2024 the tender was awarded to Cape Town Fish Market Clocktower V and A Waterfront (Pty) Ltd at a rental amount of R178,000.00 (ONE HUNDRED AND SEVENTY-EIGHT THOUSAND RAND) (VAT included) per month. On 12 August 2024 they informed the municipality that they withdraw their tender. The withdrawal was accepted, and they will forfeit the tender deposit of R1,000.00 (ONE THOUSAND RAND).

The award of the tender made provision, that should an agreement not be concluded with Cape Town Fish Market Clocktower V and A Waterfront (Pty) Ltd or be cancelled for any reason, the tender be awarded to Justea (Pty) Ltd, hereinafter referred to as "the Lessee", who scored the second highest points, at a rental amount of R71,500.00 (SEVENTY-ONE THOUSAND FIVE HUNDRED RAND) (VAT included) per month.

A lease agreement was forwarded to the Lessee for signature subject to the final approval of the lease term with a value in excess of R10,000,000.00 (TEN MILLION RAND) by Council.

Evaluation**A. Administration of Immoveable Property Policy of the Overstrand Municipality**

The following conditions of said policy apply:

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”.**

As (i) many parties showed interest in managing a restaurant from the Property, (ii) the Property is well situated, and (iii) the intended use of the Property will be for business purposes, the decision was made to make the Property available for leasing by means of a competitive bidding process at a market related rental. A competitive bidding process was therefore followed.

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 Property by means of a competitive process at a market related rental amount.

As this was not a direct lease, as a competitive process was followed, it was not needed to advertise the proposed lease in terms of 20.1(b) above.

During the initial process to obtain the in-principle approval to follow a competitive process, the expectation was that the income value for the period will be under R10 million. This was taking into account the market related rental amount of R35,650.00 (THIRTY-FIVE THOUSAND SIX HUNDRED AND FIFTY RAND) (VAT included) per month as determined by the municipality’s valuer (indicative rental in the tender document) with an estimated average CPI escalation of 6.5% per annum. With an estimated rental income for the period being under R10 million it is only necessary to obtain the final approval from the Executive Mayor.

However, with the submission of the tender, a much higher rental amount was offered. This had the effect that the estimated rental income for the period will be in excess of R10 million. This means that the final approval must be obtained from Council. Thus, the request will be for Council to approve the lease term.

Paragraph 40: “Rental, except where it is decided otherwise by the Municipality, shall escalate on the 1st of July every year, by a percentage fixed in accordance with the prevailing consumer price index (all items).”

A clause to this effect will be included in the lease agreement.

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 Management Division 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.

Conclusion

Considering the above discussion, it is recommended that the lease of the Property to the Lessee be approved for a lease period of 9 (NINE) years and 11 (ELEVEN) months at a rental amount of R71,500.00 (SEVENTY-ONE THOUSAND FIVE HUNDRED RAND) (VAT included) per month.

7. Financial Implications

The Municipality stands to gain rental in the amount of R71,500.00 (SEVENTY-ONE THOUSAND FIVE HUNDRED RAND) (VAT included) per month from 1 October 2024 such rental to 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 2025. All expenses pertaining to the proposed lease will be borne by the Lessee.

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

Divisional Manager: Expenditure, Fleet and Asset Management- 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 & A2: Locality maps

RECOMMENDATION TO THE COUNCIL:

1. that the lease of municipal property, being a portion of Remainder Erf 4771 Hermanus ($\pm 906\text{m}^2$ in extent), to Justea (Pty) Ltd for the lease, management and maintenance of municipal property as a restaurant at an initial rental amount of R71,500.00 (SEVENTY-ONE THOUSAND FIVE HUNDRED RAND) (VAT included) per month for a rental period of 9 (NINE) years and 11 (ELEVEN) months 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 consumer price index (all items), the first escalation to be 1 July 2025.

RESPONSIBLE OFFICIAL :

M ERASMUS

TARGET DATE FOR IMPLEMENTATION :

20 DECEMBER 2024

TARGET DATE TO INFORM APPLICANT :

20 DECEMBER 2024

TARGET DATE TO INFORM OBJECTOR :

N/A





Dutchies Restaurant: Portion of Remainder Erf 4771 Hermanus

