

**AGENDA of the
Portfolio Committee: Investment, Infrastructure and Tourism
3 April 2024
(Also the agenda for the Mayoral Committee Meeting: 10 April 2024)**

**4.
TWO PORTIONS OF REMAINDER FARM NO. 340 BREDASDORP, SITUATED
NEXT TO THE R317 ROAD, BUFFELJAGSBAAI: RENEWAL OF LEASE TO
BUFFELJAGS ABALONE FARM (PTY) LTD**

**A Le Roux
13 February 2024**

Manager: Property Administration

(028) 316 - 5623

1. Executive Summary

To obtain approval to enter into a further lease agreement with Buffeljags Abalone Farm (Pty) Ltd (hereinafter referred to as "Buffeljags") in respect of two portions of Remainder Farm no. 340 Bredasdorp (jointly 1,150m² in extent), situated next to the R317 Road, Buffeljagsbaai (hereinafter referred to as "the Property"), for a period of 9 (NINE) years and 11 (ELEVEN) months for the purpose of retaining two pipelines and a pump-station. The locality map is attached hereto as "Annexure A1 & A2".

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

4. Delegated Authority

Executive Mayor

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/Discussion

The Western Cape Government via its Department Human Settlements entered into a lease agreement with Buffeljags in 2013 for the purpose of two pipelines and a pumpstation as the Property was registered in its name. A Deed of Sale was later entered into between the Western Cape Government

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via its Department Human Settlements and the Overstrand Municipality whereby various properties, including the Property mentioned above, were transferred to the Municipality. Subsequently a cession of the lease agreement was entered into after the transfer of the property took place.

The last agreement was for a period of 9 (NINE) years and 11 (ELEVEN) months, which commenced on 1 January 2013 and expired on 30 November 2022.

Buffeljags applied to renew the lease agreement for a further period. Although the process for the renewal of the agreement was commenced with timeously, the process could unfortunately not be completed before expiry of the said agreement as the valuation process took longer than expected.

The market related rental as determined by HCB Valuations and Services (Pty) Ltd was impractical and could not be considered. The Property Administration department advised Buffeljags to consider the registration of a servitude over the Property rather than to enter into a renewal agreement with the Municipality, but Buffeljags did not agree to the suggestion and requested that the renewal process continue.

A lease agreement has in the meantime been entered into (for administrative purposes) with a condition that the Executive Mayor approves the long-term lease at a Mayoral Committee Meeting. The renewal date in the lease agreement was backdated to commence the day after expiry of the last agreement.

The municipal account is paid up to date and no complaints regarding the lease of the Property was received during the period the lease was ceded to the Municipality.

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

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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”.

The proposed lease period is for 9 (NINE) years and 11 (ELEVEN) months.

The property is not a business site. Buffeljags is the owner of the adjoining property, being Remainder Farm No. 357 Bredasdorp and has been using the pipelines and pumpstation since 2013 and no complaints have been received from the community. No other person can utilize the pipelines and pumpstation, and therefore it is recommended that the Property be leased directly to Buffeljags.

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

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- 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.*

Paragraph 22: “The in principle approval of the Accounting Officer must be obtained with any request for the renewal of the lease agreement.”

The Accounting Officer (Municipal Manager) approved in principle the process for a further lease of the Property to the Applicant, subject to a public participation process being followed and further subject to the approval from the Executive Mayor.

The proposed lease was advertised in Gans Berg News on 13 February 2023 for a 30 (THIRTY) day comment/objection period. No objection/comment was received.

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).”

HCB Valuations and Services determined the market related value on 1 March 2023 at an annual amount of R1,150.00 (ONE THOUSAND ONE HUNDRED AND FIFTY RAND) (VAT excluded), which calculates to a monthly rental amount of R100.00 (ONE HUNDRED RAND) (VAT excluded).

The market related rental per month as per the valuation report received from HCB is impractical and cannot be considered, for the current escalated rental per annum is an amount of R16,386.22 (SIXTEEN THOUSAND THREE HUNDRED AND EIGHTY-SIX RAND AND TWENTY-TWO CENTS) which calculates to an amount of R1,187.41 (ONE THOUSAND ONE HUNDRED AND EIGHTY -EVEN RAND AND FORTY-ONE CENTS) (VAT excl.) per month.

It is recommended, if it is approved, that the rental amount remains as per the current lease agreement, an annual amount which escalates annually by a percentage equal to the prevailing consumer price index (all items).

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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.”

Buffeljags will be liable for the payment of all costs relating to the renewal of the lease agreement which in this case are the advertisement - and valuation 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 was included in the lease agreement.

B. Advertisement/Notification

An advertisement for the lease of the Property to Buffeljags was published in the Gans Berg News on 13 February 2023 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 the Property to Buffeljags be approved for a further period of 9 (NINE) years AND 11 (ELEVEN) months from 1 December 2022 at a rental amount of R16,386.22 (SIXTEEN THOUSAND THREE HUNDRED AND EIGHTY-SIX RAND AND TWENTY-TWO CENTS) (VAT Excluded) per annum.

7. Financial Implications

The Municipality stands to gain rental in the amount of R16,386.22 (SIXTEEN THOUSAND THREE HUNDRED AND EIGHTY-SIX RAND AND TWENTY-TWO CENTS) (VAT Excluded) where after the rental amount will escalate annually on 1 July in accordance with the consumer price index (all items). All expenses pertaining to the proposed lease will be borne by Buffeljags.

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8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

Senior Town Planner - Mr S van der Merwe

“Farm 357/0 has approval for consent use (aquaculture). The facilities relate to their sewerage in/out lets that was part of the planning approval. As such, no objection against renewal of the lease agreement with Buffeljags Abalone.”

Senior Manager: Expenditure & 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

Annexure A1 & 2: Locality Plan

RECOMMENDATION:

1. that the renewal of the lease of municipal property, being two portions of Remainder Farm 340 Bredasdorp (jointly 1,150m² in extent), situated next to the R317 Road, Buffeljagsbaai, to Buffeljags Abalone Farm (Pty) Ltd for the purpose of retaining two pipelines and a pump-station at the rental amount of R16,386.22 (SIXTEEN THOUSAND THREE HUNDRED AND EIGHTY-SIX RAND AND TWENTY-TWO CENTS) (VAT Excluded) per annum for a period of 9 (NINE) years and 11 (ELEVEN) months from 1 December 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 consumer price index (all items), the next escalation to be on 1 July 2024.

RESPONSIBLE OFFICIAL :	R OCTOBER
TARGET DATE FOR IMPLEMENTATION :	30 APRIL 2024
TARGET DATE TO INFORM APPLICANT :	7 MAY 2024
TARGET DATE TO INFORM OBJECTOR :	N/A



