

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

**5.
PORTIONS OF ERVEN 829 & 832 HERMANUS: RENEWAL OF LEASE OF
MUNICIPAL PROPERTIES TO KEE PROPERTY INVESTMENTS (PTY) LTD**

**A Le Roux
22 February 2024**

Manager: Property Administration

(028) 316 5623

1. Executive Summary

To obtain approval to enter into a further lease agreement with KEE Property Investments (Pty) Ltd, hereinafter referred to as "KEE", in respect of portions of Erven 829 & 832 Hermanus (jointly ±92m² in extent), hereinafter referred to as "the Property", situated in Marine Drive, Northcliff, Hermanus for a period of 9 (NINE) years and 11 (ELEVEN) months for the retention of balconies over the Property for restaurant outdoor seating purposes. The locality map and photos of the balconies are attached hereto as "Annexure A1 & A2".

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

KEE is the owner of Erf 10695 Hermanus, adjacent to the Property, from where the Restaurants are being operated. When the building was built on Erf 10695 Hermanus by a previous owner balconies were built overhanging past the property boundary and over the Property. The Municipality had agreements with previous owners of the property for this encroachment onto the Property.

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After purchasing Erf 10695 Hermanus, the Applicant also entered into a lease agreement with the Municipality for a period of 3 (THREE) years from 1 May 2021 until 30 April 2024 for the purpose of balconies over the Property for outdoor restaurant seating purposes.

The Applicant applied for the lease of the Property for a further period of 9 (NINE) years and 11 (ELEVEN) months. No complaints were received from the community during the previous lease period. 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;

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- 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 (TEN MILLION RAND) 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 R3,303.72 (THREE THOUSAND THREE HUNDRED AND THREE RAND AND SEVENTY-TWO CENTS) (VAT excluded) per month for the ±92m²s.

The Property can be classified as non-viable property as no other party can make use of it except the owner of an adjoining property, which in this case is KEE. The size and locality of the Property makes it impossible for any development or use on the Property by any other party. No complaints have been received regarding the use of the Property.

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.”**

KEE applied for the renewal of the lease agreement which process for renewal was approved in principle by the Municipal Manager on 14 November 2023 for a period of 9 (NINE) years and 11 (ELEVEN) months, 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, as the proposed lease was advertised in The Village News on 19 January 2024 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

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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 R35.91 (THIRTY-FIVE RAND AND NINETY-ONE CENTS) (VAT excluded) per square metre per month for the 2023/2024 financial year. The lease areas are jointly ±92m² (NINETY-TWO) square metres in extent and the monthly rental calculates to an amount of R3,303.72 (THREE THOUSAND THREE HUNDRED AND THREE RAND AND SEVENTY-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 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.”

KEE is 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 the Property was published in The Village News on 19 January 2024 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 KEE be approved for a further period of 9 (NINE) years and 11 (ELEVEN) months from 1 May 2024 at a rental amount of R3,303.72 (THREE THOUSAND THREE HUNDRED AND THREE RAND AND SEVENTY-TWO

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CENTS) (VAT excluded) per month for the 2023/2024 financial year.

7. Financial Implications

The Municipality stands to gain rental in the amount of R3,303.72 (THREE THOUSAND THREE HUNDRED AND THREE RAND AND SEVENTY-TWO CENTS) (VAT excluded) per month from 1 May 2024 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 2024. All expenses pertaining to the proposed lease will be borne by KEE.

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

Senior Town Planner - Ms H van der Stoep

"No objection."

Manager: Building Control - Mr L Coetzee

"No objection from Building control."

Senior Manager: Hermanus Administration - Mr A Wyngaard

"The office of the Senior Manager, Hermanus Administration has no objection."

Senior Manager: Expenditure & Assets – 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 & A2: Locality Plan & Photos of balconies

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RECOMMENDATION:

1. that the lease of municipal properties, being portions of Erven 829 & 832 Hermanus (jointly ±92m² in extent), to KEE Property Investments (Pty) Ltd, for the purpose of retaining balconies over the municipal properties for outdoor restaurant seating purposes at a rental amount of R35.91 (THIRTY-FIVE RAND AND NINETY-ONE CENTS) (VAT excluded) per square metre per month for a further period of 9 (NINE) years and 11 (ELEVEN) months from 1 May 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 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 2024.

RESPONSIBLE OFFICIAL :	R OCTOBER
TARGET DATE FOR IMPLEMENTATION :	2 MAY 2024
TARGET DATE TO INFORM APPLICANT :	9 MAY 2024
TARGET DATE TO INFORM OBJECTOR :	N/A





±3,08m² in extent and ±3,63m² in extent



±4,5m² in extent



±9,17m² in extent



(±70,84m² in extent