

**AGENDA of the
Portfolio Committee : Investment, Infrastructure and Tourism
7 February 2024
(Also the agenda for the Mayoral Committee Meeting : 13 February 2024)**

5.

**A PORTION OF REMAINDER ERF 4771 KNOWN AS “DUTCHIES RESTAURANT”:
DEVIATION FROM PARAGRAPH 18 OF THE ADMINISTRATION OF IMMOVABLE
PROPERTY POLICY OF 2015 ALLOWING THE MUNICIPALITY TO TEMPORARILY
RENEW THE LEASE OF MUNICIPAL PROPERTY TO TASOCLOX (PTY) LTD**

**M Erasmus
2 November 2023**

Acting Manager: Property Administration

(028) 316-5623

1. Executive Summary

To obtain approval from the Executive Mayor to enter into a further temporary lease agreement with Tasoclox (Pty) Ltd in respect of a portion of Remainder Erf 4771 Hermanus, ±906m² in extent, for the purpose of managing the restaurant known as “Dutchies” at Grotto Beach, Hermanus; and

To obtain approval from Council for the deviation from paragraph 18 of the Administration of Immovable Property Policy (as approved by Council on 25 November 2015) allowing the Municipality to enter into a further temporary lease agreement with Tasoclox (Pty) Ltd (the “Applicant”) in respect of a portion of Remainder Erf 4771 Hermanus for the purpose of managing the restaurant known as “Dutchies” at Grotto Beach, Hermanus, without following a competitive bidding process.

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
Promotion of tourism, economic and social development

4. Delegated Authority

Partly delegated to the Executive Mayor

5. Legal Requirements

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

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6. Background/Discussion/Evaluation/Conclusion

Background

Following a call for tenders, a lease agreement in respect of a restaurant known as “Dutchies” situated at Grotto Beach, Hermanus on a portion of Remainder Erf 4771 Hermanus (“the Property”) was entered into between the Overstrand Municipality and Superfecta Trading 608 CC. The lease agreement was for a two-year period from 1 October 2013 to 30 September 2015.

The lease agreement afforded the Municipality, at its sole discretion, to consider the renewal of the lease agreement for a further period of one year provided that the lessee gives the necessary notice in writing to the Municipality of their desire to renew the lease three months prior to the expiration of the lease agreement. The necessary notice was provided by the lessee and the lease agreement was renewed for another year until 30 September 2016.

After an application for renewal of the lease, Council on 28 April 2016 approved to further lease the Property to Superfecta Trading 608 CC for a two-year period from 1 October 2016 until 30 September 2018. During the period of this lease agreement, Superfecta Trading 608 CC sold its business and pursuant thereto, the lease agreement was ceded to Tasoclox (Pty) Ltd (the “Applicant”). It was envisaged that during the period of this lease, that the user department for the tender of the envisaged development (Town Planning) would finalise and advertise a new tender in respect of the Property.

On 27 June 2018 the Executive Mayor at a Mayoral Committee Meeting approved the application to further lease the Property to the Applicant for a two-year period from 1 October 2018 to 30 September 2020 and on same date Council approved a deviation from the competitive bidding process in respect of the Property, in order for the Property to be leased directly to the Applicant.

When the lease agreement ending on 30 September 2020 was nearing its expiry date, the relevant user department could not place the development of the Property out on tender as certain processes still needed to be completed before the tender could be advertised. The Applicant applied to further lease the Property.

The Executive Mayor approved another renewal of the lease for a period of 3 (THREE) years from 1 October 2020 to 30 September 2023 at a rental amount of R19,825.50 (NINETEEN THOUSAND EIGHT HUNDRED AND TWENTY-FIVE RAND AND FIFTY CENTS) (VAT excluded) per month,

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escalating annually on 1 July by a percentage equal to the Consumer Price Index (all items).

Discussion

The Applicant applied for the renewal of the lease agreement for a further **temporary period of 9 (NINE) months from 1 October 2023 until 30 June 2024.**

The tender for the development of a restaurant at Grotto beach on the old Nautilus site has been finalised by the Town Planning Department and the award has been made. The tender however does not include the Property leased by the Applicant and the development of the new restaurant will take quite some time to complete.

A lease agreement has in the meantime been entered into for audit purposes with suspensive conditions stipulating that the agreement is subject to the approval sought in this report.

The tender for the lease of the Property could not be advertised yet as there were some technical issues that had to be resolved before the tender specifications could be drafted. The tender will however be made available early in 2024 with a proposed commencement date of 1 July 2024.

Evaluation

A: Administration of Immovable Property Policy of the Overstrand Municipality:

The following paragraphs of the Administration of Immovable Property Policy are applicable:

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.”

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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 Property will be made available by means of a tender process for the long-term leasing thereof. The request is that the agreement be renewed for a period of 9 (NINE) months pending the outcome of the tender to be advertised.

Cognisance should also be had to the fact that should the Property be vacant until the tender process is completed, the Property would most likely be vandalised resulting in damages, insurance claims to be made and in all likelihood impacting on the timeline of the envisaged development.

Furthermore, the Property is an important attraction, not only for tourists visiting the area but also the community of the Overstrand Municipality. Should the lease agreement not be renewed it would entail that the restaurant is closed, consequently having a negative economic impact and could be construed as the Overstrand Municipality not using its available resources effectively, efficiently and/or economically as the interest of the community will not be served at best.

It is therefore recommended that the Property be leased directly to the Applicant without following a competitive process for the short term. For audit purposes a lease agreement was entered into subject to the relevant approvals.

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Paragraph 20: “Long term lease of municipal immovable property with an income value less than R10 million:

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 subsequently approved that the right may be granted.”**

The Accounting Officer (Municipal Manager) approved in principle the renewal of the lease of the Property to the Applicant for a period of 9 (NINE) months, subject thereto that the approval of Council is obtained as to the deviation from paragraphs 18 of the Administration of Immovable Property Policy.

The renewal of the lease was advertised in the local newspaper and no objections were received.

The approval from the Executive Mayor for the renewal of the lease agreement is hereby requested subject to the mentioned deviations being approved by Council.

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).”

On 24 Augusts 2021 the Executive Mayor, at a Mayoral Committee meeting, approved the Lease Agreement at a rental amount of R19,825.50 (NINETEEN THOUSAND EITHG HUNDRED AND TWENTY-FIVE RAND AND FIFTY CENTS) (VAT Excluded) per month, escalating annually on 1 July by a percentage equal to the Consumer Price Index (All items), which rental amount was arrived at taking into consideration the valuations of the market related rental done by Boland Valuers (on behalf of the Municipality) and Hermanus Property Sales (on behalf of the Applicant) respectively. The rental amount escalated annually in terms of the Consumer Price Index (All items) and for the

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2023/2024 financial year the rental amounts to R23,140.13 (TWENTY-THREE THOUSAND ONE HUNDRED AND FORTY RAND AND THIRTEEN CENTS) (VAT excluded) per month.

B: Advertisement/Notification

An advertisement for the lease of the Property was published in The Village News on 24 November 2023 for a 30 (THIRTY) day objection/comment period. No objections were received.

Conclusion

Taking the above into consideration, it is recommended that:

- (a) The Executive Mayor approves the renewal of the temporary lease of the Property to the Applicant for a period of 9 (NINE) months from 1 October 2023 to 30 June 2024 for the purpose of managing a restaurant at Grotto Beach, Hermanus, at a rental amount of R23,140.13 (TWENTY-THREE THOUSAND ONE HUNDRED AND FORTY RAND AND THIRTEEN CENTS) (VAT excluded) per month; and
- (b) Council approves the deviation from paragraph 18 of the Administration of Immovable Property Policy in order to renew the current lease agreement with the Applicant for a further temporary period of 9 (NINE) months without following a competitive process.

7. Financial Implications

The Municipality stands to gain a rental amount of R23,140.13 (TWENTY-THREE THOUSAND ONE HUNDRED AND FORTY RAND AND THIRTEEN CENTS) (VAT excluded) per month as well as service charges.

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

Senior Manager: Expenditure and Assets - Mr J Vorster

“As this application is dealt with in terms of the Administration of Immoveable Property Policy and it relates to a revenue generating project, with no intension of disposing of the asset, there is no objection to the application.”

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10. Annexures

Annexure A: Locality Map

RECOMMENDATION TO THE EXECUTIVE MAYOR:

1. that the temporary renewal of the lease of a portion of Erf 4771 Hermanus, ±906m² in extent, to Tasoclox (Pty) Ltd for a period of 9 (NINE) months from 1 October 2023 to 30 June 2024 for the purpose of managing a restaurant at Grotto Beach, Hermanus, at a rental amount of R23,140.13 (TWENTY-THREE THOUSAND ONE HUNDRED AND FORTY RAND AND THIRTEEN CENTS) (VAT excluded) per month, **be approved**; and
2. that the abovementioned approval be subject to Council approving a deviation from paragraph 18 of the Administration of Immovable Property Policy of 2015.

RECOMMENDATION TO THE COUNCIL:

that the deviation from paragraph 18 of the Administration of Immovable Property Policy in order to renew the current lease agreement with Tasoclox (Pty) Ltd for a further period of 9 (NINE) months without following a competitive process, **be approved**.

RESPONSIBLE OFFICIAL :	M ERASMUS
TARGET DATE FOR IMPLEMENTATION :	31 MARCH 2024
TARGET DATE TO INFORM APPLICANT :	31 MARCH 2024
TARGET DATE TO INFORM OBJECTOR :	N/A

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**M Erasmus
2 November 2023**

Acting Manager: Property Administration

(028) 316-5623

**THIS MATTER SERVED BEFORE THE INVESTMENT & INFRASTRUCTURE
PORTFOLIO COMMITTEE ON 7 FEBRUARY 2024, WHICH COMMITTEE
RECOMMENDED AS FOLLOWS:**

RECOMMENDATION TO THE EXECUTIVE MAYOR:

1. that the temporary renewal of the lease of a portion of Erf 4771 Hermanus, ±906m² in extent, to Tasoclox (Pty) Ltd for a period of 9 (NINE) months from 1 October 2023 to 30 June 2024 for the purpose of managing a restaurant at Grotto Beach, Hermanus, at a rental amount of R23,140.13 (TWENTY-THREE THOUSAND ONE HUNDRED AND FORTY RAND AND THIRTEEN CENTS) (VAT excluded) per month, **be approved**; and
2. that the abovementioned approval be subject to Council approving a deviation from paragraph 18 of the Administration of Immovable Property Policy of 2015.

RECOMMENDATION TO THE COUNCIL:

that the deviation from paragraph 18 of the Administration of Immovable Property Policy in order to renew the current lease agreement with Tasoclox (Pty) Ltd for a further period of 9 (NINE) months without following a competitive process, **be approved**.

RESPONSIBLE OFFICIAL :	M ERASMUS
TARGET DATE FOR IMPLEMENTATION :	31 MARCH 2024
TARGET DATE TO INFORM APPLICANT :	31 MARCH 2024
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ANNEXURE A

