

**AGENDA of the
Portfolio Committee : Investment & Infrastructure
4 October 2023
(Also the agenda for the Mayoral Committee Meeting : 11 October 2023)**

6.

A PORTION OF REMAINDER ERF 4771 HERMANUS (KNOWN AS THE OLD NAUTILUS RESTAURANT SITE), SITUATED AT GROTTA BEACH: LEASE OF MUNICIPAL PROPERTY TO CAPE TOWN FISH MARKET CLOCKTOWER V&A WATERFRONT (PTY) LTD

**A Le Roux
23 August 2023**

Manager: Property Administration

(028) 316 5623

1. Executive Summary

To obtain approval to enter into a lease agreement with Cape Town Fish Market Clocktower V&A Waterfront (Pty) Ltd in respect of municipal property, being a portion of Remainder Erf 4771 Hermanus ($\pm 500\text{m}^2$ in extent) situated at Grotto Beach, Hermanus, hereinafter referred to as “the Property”, for a lease period of 25 (TWENTY-FIVE) years for the lease, development, management and maintenance of municipal property (known as the “Old Nautilus restaurant Site”) for restaurant purposes. The locality maps are 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
Creation and maintenance of a safe and healthy environment

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)

**AGENDA of the
Portfolio Committee : Investment & Infrastructure
4 October 2023
(Also the agenda for the Mayoral Committee Meeting : 11 October 2023)**

6. Background/Discussion/Evaluation/Conclusion

Background/Discussion

On 5 August 2022 the Accounting Officer (Municipal Manager) approved in principle the lease of the Property for the lease, development, management and maintenance of the municipal property for restaurant purposes by means of a competitive process at a market related rental amount for a lease period of 25 (TWENTY-FIVE) years (lease period), with an additional 2 (TWO) years to develop before rental is payable.

Tenders were duly invited and on 17 March 2023 the tender was awarded to Cape Town Fish Market Clocktower V&A Waterfront (Pty) Ltd, hereinafter referred to as "the Applicant", at a rental amount of R80,000.00 (EIGHTY THOUSAND RAND) (VAT included) per month. Rental will only be payable once the development is completed, but no later than 2 (TWO) years from date of signature/commencement of the agreement.

Evaluation

The following conditions of Administration of Immoveable Property Policy of the Overstrand Municipality 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 are interested in establishing and managing a restaurant from the Property, (ii) the Property is situated at one of the most popular beaches in Hermanus, and (iii) the intended use of the Property will be for formal business purposes, the decision was made to make the Property

**AGENDA of the
Portfolio Committee : Investment & Infrastructure
4 October 2023
(Also the agenda for the Mayoral Committee Meeting : 11 October 2023)**

available for leasing by means of a competitive bidding process at a market related rental. A competitive bidding process was therefore followed.

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 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. As a competitive process was followed, there is no need for a public participation process. The Executive Mayor’s approval for the long-term lease is hereby sought.

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 44: “Where land is leased for development, a condition, taking into consideration the nature of the development, may be included in the lease agreement stipulating that such development must be completed within two years from date of conclusion of the lease agreement. Likewise a suspensive condition may be included in the lease agreement to provide for cancellation in the event that the development has not been completed, unless a written extension has been granted by the Municipality.”

A clause to this effect will be included in the lease agreement. A maximum period of 2 (TWO) years will be allowed for development purposes. Rental will be payable once the development is finalised or after two years from date of signature/commencement of the agreement, whichever is the soonest.

Paragraph 47: “Subject to paragraph 46 above, immovable property let by the Municipality shall be inspected at least once a year by the

**AGENDA of the
Portfolio Committee : Investment & Infrastructure
4 October 2023
(Also the agenda for the Mayoral Committee Meeting : 11 October 2023)**

Municipality to ensure compliance with the terms and conditions of the agreement of sale or lease.”

The Property will be inspected 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 Applicant be approved for a lease period of 25 (TWENTY FIVE) years at a rental amount of R80,000.00 (EIGHTY THOUSAND RAND) (VAT included) per month, payable at the latest two years from signature/commencement date of the agreement.

7. Financial Implications

The Municipality stands to gain rental in the amount of R80,000.00 (EIGHTY THOUSAND RAND) (VAT included) per month, such rental to escalate every year on the 1st of July in accordance with the consumer price index (all items). The tender made provision for a period of at the most 2 (TWO) years from the date of the signature/commencement of the agreement for the planning and developing on the Property whereafter the 25 (TWENTY-FIVE) years will commence and the rental becomes payable.

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

Senior Manager: Expenditure and 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 - A2: Locality Plan

**AGENDA of the
Portfolio Committee : Investment & Infrastructure
4 October 2023
(Also the agenda for the Mayoral Committee Meeting : 11 October 2023)**

RECOMMENDATION:

1. that the lease of municipal property, being a portion of Remainder Erf 4771 Hermanus ($\pm 500\text{m}^2$ in extent), to Cape Town Fish Market Clocktower V&A Waterfront (Pty) Ltd for the lease, development, management and maintenance of municipal property (known as the "Old Nautilus restaurant site) for restaurant purposes at the rental amount of R80,000.00 (EIGHTY THOUSAND RAND) (VAT included) per month for a rental period of 25 (TWENTY FIVE) years in terms of the Administration of Immoveable Property Policy of the Overstrand Municipality, **be approved**;
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),
3. that it be noted that provision is made for a period of at the most 2 (TWO) years from the date of the signature/commencement of the agreement for the planning and developing on the Property whereafter the 25 (TWENTY-FIVE) years will commence and the rental becomes payable;
4. that Cape Town Fish Market Clocktower V&A Waterfront (Pty) Ltd be responsible for the costs of registering the lease agreement against the title deed of the Property; and
5. that Cape Town Fish Market Clocktower V&A Waterfront (Pty) Ltd enters into a services agreement with the Municipality for the provision of services in terms of the tender, applicable legislation and Council policies.

RESPONSIBLE OFFICIAL :	W MURTZ
TARGET DATE FOR IMPLEMENTATION :	17 NOVEMBER 2023
TARGET DATE TO INFORM APPLICANT :	30 NOVEMBER 2023
TARGET DATE TO INFORM OBJECTOR :	N/A

**AGENDA of the
Portfolio Committee : Investment & Infrastructure
8 November 2023
(Also the Agenda for the Mayoral Committee Meeting : 15 November 2023)**

6.

A PORTION OF REMAINDER ERF 4771 HERMANUS (KNOWN AS THE OLD NAUTILUS RESTAURANT SITE), SITUATED AT GROTTO BEACH: LEASE OF MUNICIPAL PROPERTY TO CAPE TOWN FISH MARKET CLOCKTOWER V&A WATERFRONT (PTY) LTD

**A Le Roux
23 August 2023**

Manager: Property Administration

(028) 316 5623

THIS MATTER SERVED BEFORE THE INVESTMENT & INFRASTRUCTURE PORTFOLIO COMMITTEE ON 8 NOVEMBER 2023, WHICH COMMITTEE RECOMMENDED AS FOLLOWS:

RECOMMENDATION:

that the item **be withdrawn.**

RESPONSIBLE OFFICIAL :

W MURTZ

TARGET DATE FOR IMPLEMENTATION :

13 DECEMBER 2023

TARGET DATE TO INFORM APPLICANT :

13 DECEMBER 2023

TARGET DATE TO INFORM OBJECTOR :

N/A



ANNEXURE A2

