

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

10.

A PORTION OF PORTION 9 OF THE FARM FRANSCHÉ KRAAL NO 708 (ROAD RESERVE), ADJACENT TO ERF 387 FRANSKRAALSTAND (77 CILLIERS STREET, FRANSKRAALSTRAND): RENEWAL OF LEASE OF MUNICIPAL PROPERTY TO MR SHAWN VAN NIEKERK

**A Le Roux
4 September 2023**

Manager: Property Administration

(028) 316 5623

1. Executive Summary

To obtain approval to enter into a further lease agreement with Mr Shawn van Niekerk (hereinafter referred to as “the Applicant”) for a period of 9 (NINE) years and 11 (ELEVEN) months in respect of municipal property, being a portion of Portion 9 of the Farm Fransche Kraal No 708, ($\pm 24\text{m}^2$ in extent) (hereinafter referred to as “the Property”), adjacent to Erf 387 Franskraalstand, situated at 77 Cilliers Street, Franskraalstrand, for the purpose of a temporary shading structure and the placement of tables and chairs for restaurant purposes. See the locality plan attached hereto marked Annexure “A”.

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)

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6. Background/Discussion/Evaluation/Conclusion

Background/ Discussion

The Property has been used by various owners of Erf 387 Franskraalstrand since 2000. In 2016 the Applicant, being the current owner of Erf 387 Franskraalstrand, applied for the lease of the Property to accommodate his clients by means of temporary shading and seating facility. The Applicant has been using the Property since 1 August 2017 for the purpose of a temporary shading structure and the placement of tables and chairs for restaurant purposes.

The last lease agreement was for a period of 3 (THREE) years which commenced on 1 August 2020 and expired on 31 July 2023 for placing a temporary shading structure and tables and chairs for restaurant seating purposes.

The Applicant applied for the renewal of the lease of the Property for a further period of 9 (NINE) years and 11 (ELEVEN) months. Although the application to renew was received timeously, the process was delayed due to the Applicant not responding timeously on correspondence sent to him. The Applicant is still paying the rental as per the agreement. 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.”

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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”.**

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.

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 the Applicant. 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.”**

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The Applicant applied for the renewal of the lease agreement which was approved in principle by the Municipal Manager on 21 April 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, and the proposed lease was advertised in The Gans Berg News on 25 August 2023 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 and encroachments, the approved amount will be used for purposes of determining the rental amount"*.

The lease area was previously determined by a plan that was submitted by the Applicant which indicated that the lease area is only $\pm 10.2\text{m}^2$ in extent, but according to the GIS system the actual size of the lease area is $\pm 24\text{m}^2$ in extent, and therefore the size of the lease area is amended, and the rental is hereby adjusted from the previous agreement.

The tariff for the lease of municipal property for outdoor seating adjoining a restaurant is R35.91/m² (THIRTY-FIVE RAND AND NINETY-ONE CENTS) (VAT excluded) per square metre for the 2023/2024 financial year. The lease area is $\pm 24\text{m}^2$ (TWENTY-FOUR) square metres in extent and the monthly rental calculates to an amount of R861.84 (EIGHT HUNDRED AND SIXTY-ONE RAND AND EIGHTY-FOUR 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."*

The Applicant will be 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."*

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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 Gans Berg News on 25 August 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 the Applicant be approved for a further period of 9 (NINE) years and 11 (ELEVEN) months from 1 August 2023 at a rental amount of R861.84 (EIGHT HUNDRED AND SIXTY-ONE RAND AND EIGHTY-FOUR CENTS) (VAT excluded) per month for the 2023/2024 financial year.

7. Financial Implications

The Municipality stands to gain rental in the amount of R861.84 (EIGHT HUNDRED AND SIXTY-ONE RAND AND EIGHTY-FOUR CENTS) (VAT excluded) per month from 1 August 2023 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 the Applicant.

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

Senior Town Planner - Mr. S van der Merwe

“The encroachment of the outside seating as per my comment during January 2020 constitutes a non-conforming use since it is situated on the road reserve and zoned Transport Zone 2 : Public Road. The encroachment had been permitted historically, thus the opinion that it constitutes a non-conforming use. The renewal of the lease is supported on the basis that the lease area remains the same. Any future proposed increase thereof will trigger the provisions of the Municipal Land Use Planning By-law.”

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Senior Manager: Expenditure & Assets: Hermanus – Mr J Vorster

“As this is a revenue generating proposal with no intention to dispose of the asset, there is no objection.”

10. Annexures

Annexure A1 & A2: Locality Plan

RECOMMENDATION:

1. that the lease of municipal property, being a portion of Portion 9 of the Farm Fransche Kraal No 708, adjacent to Erf 387 Franskraalstand ($\pm 24\text{m}^2$ in extent) situated next to 77 Cilliers Street, Franskraalstrand, to Mr Shawn van Niekerk for the purpose of placing a temporary shading structure and tables and chairs for restaurant purposes for a period of 9 (NINE) years and 11 (ELVEN) months at the rental amount of R861.84 (EIGHT HUNDRED AND SIXTY ONE RAND AND EIGHTY FOUR CENTS) (VAT excluded) per month from 1 August 2023 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 :	8 NOVEMBER 2023
TARGET DATE TO INFORM APPLICANT :	15 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)**

10.

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**A Le Roux
4 September 2023**

Manager: Property Administration

(028) 316 5623

THIS MATTER SERVED BEFORE THE INVESTMENT & INFRASTRUCTURE PORTFOLIO COMMITTEE ON 8 NOVEMBER 2023, WHICH COMMITTEE SUPPORTED THE RECOMMENDATION

RESPONSIBLE OFFICIAL :	R OCTOBER
TARGET DATE FOR IMPLEMENTATION :	13 DECEMBER 2023
TARGET DATE TO INFORM APPLICANT :	13 DECEMBER 2023
TARGET DATE TO INFORM OBJECTOR :	N/A



