

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

11.

A PORTION OF ERF 4831 HERMANUS: DEVIATION FROM PARAGRAPHS 18 AND 20.1(B) OF THE ADMINISTRATION OF IMMOVABLE PROPERTY POLICY OF 2015 ALLOWING THE MUNICIPALITY TO ENTER INTO A FURTHER TEMPORARY LEASE AGREEMENT WITH THE KLEIN RIVER LAGOON PARK BODY CORPORATE FOR A SHORT-TERM PERIOD PENDING THE FINALISATION OF THE TENDER PROCESS

**A Le Roux
18 August 2023**

Manager: Property Administration

(028) 316-5623

1. Executive Summary

To obtain approval from the Executive Mayor to enter into a further short-term lease agreement for a period of 13 (THIRTEEN) months with The Klein River Lagoon Park Body Corporate (hereinafter referred to as “the Applicant”), in respect of a portion of Erf 4831 Hermanus, 6,279m² (SIX THOUSAND TWO HUNDRED AND SEVENTY-NINE SQUARE METRES) in extent (hereinafter referred to as the “Property”) situated in the De Mond Public Resort, for the purpose of a site for mobile park homes;

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 short-term lease agreement with the Applicant in respect of the Property, for the purpose of a site for mobile park homes, without following a competitive process; and

To obtain approval from Council for the deviation from paragraph 20.1(b) of the Administration of Immovable Property Policy (as approved by Council on 25 November 2015) allowing the Municipality to enter into a further short-term lease agreement with the Applicant in respect of the Property for the purpose of a site for mobile park homes, without following a public participation 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

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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

6. Background/Discussion/Evaluation/Conclusion

Background/Discussion

A lease agreement was entered into between the Municipality and the Applicant. The lease agreement was for a period of 3 (THREE) years from 1 September 2020 and expired on 31 August 2023. (See the Locality Map attached as Annexure A).

In the meantime a new tender was advertised for the lease and development of a portion of Erf 4831 Hermanus and Erf 5327 Hermanus (De Mond) as a public resort. There are some internal processes that are taking longer than expected and the validity period of the tender was extended with 6 (SIX) months. When the tender is awarded the lease agreement still needs to be negotiated and a report must serve before the Executive Mayoral committee requesting the approval from the Mayor for the long term lease. When the lease agreement with the successful bidder is entered into the lease agreement with the Applicant will be ceded to the successful bidder which will also enable the successful bidder to generate a bit of an income from the rental pending the development.

In the light of the above, and taking into consideration that the Applicant has erected semi-permanent structures on the Property that have been there for many years and the risk of having such a facility vacant in such a remote area, it is recommended that the lease agreement be renewed for a temporary period of 13 (THIRTEEN) months, pending the awarding of a new tender for the whole area.

The reason a 13 (THIRTEEN) month renewal is requested is to allow the lease agreement to expire at the same date as the De Vette Mossel lease agreement which is also on a portion of Erf 4831 Hermanus.

The Accounting Officer (Municipal Manager) approved in principle the short-term lease of the Property to the Applicant, subject thereto that the approval of Council is obtained as to the deviation from paragraphs 18 and 20.1(b) of the Administration of Immovable Property Policy, as requested in this report.

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In the interim, for administrative and audit purposes, a written lease agreement was signed that is subject to the Executive Mayor's approval of the lease and Council's approval for a deviation from the competitive bidding and the public participation requirements to allow the Municipality to enter into the agreement directly.

One of the conditions will be that the Municipality can cancel the lease agreement with the Applicant on the provision of 6 months written notice, which condition was accepted by the Applicant.

It must be noted that the Applicant is not prohibited from negotiating with any new developer of the De Mond Caravan Park.

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.”

As the renewal was considered 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.”

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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”.**

Even though the lease with the Applicant will be for a short period, the total lease period is still more than 3 (THREE) years and therefore is classified as a long-term lease. As the whole area is made available for the lease and development for a long term, it will not serve a useful purpose to follow a competitive process for this specific portion of Erf 4831 for such a short period. The Property will thus be included in the tender for the bigger portion of Erf 4831 Hermanus (see diagram attached marked Annexure B). The Applicant will then have the opportunity again to negotiate with any new developer as and when the tender is awarded. Therefore, a request is made to Council to deviate from this paragraph. The request is that the agreement be renewed for a period of 13 (THIRTEEN) months pending the outcome of the tender.

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 short-term renewal of the lease of the Property to the Applicant for a period of 13 (THIRTEEN) months, subject thereto that the approval of Council is obtained for the deviation from paragraphs 18 and 20.1(b) of the Administration of Immoveable Property Policy.

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A request is made to Council to deviate from paragraph 20.1(b) as the Property will only be leased for a short period. The tender for the lease of a long-term period was advertised and tenders 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).”

The last rental amount paid by the Applicant was R26,261.78 (TWENTY-SIX THOUSAND TWO HUNDRED AND SIXTY-ONE RAND AND SEVENTY-EIGHT CENTS) (VAT excluded) and this amount can be seen as market related as it was negotiated between two willing parties in a business transaction with due regard to their circumstances and this was the amount that was taken over from the Pohl group and escalated annually thereafter. This rental amount will escalate annually on the 1st of July by a percentage equal to the prevailing consumer price index (all items).

B: Advertisement/Notification

It is requested that a deviation from paragraph 20.1(b) of the Administration of Immovable Property Policy be approved in that an advert not be published for the temporary renewal of the lease agreement.

Conclusion

Taking the above into consideration, it is recommended that:

- (a) The Executive Mayor approves the short-term renewal of the lease of the Property to the Applicant for a period of 13 (THIRTEEN) months at a rental amount of R26,261.78 (TWENTY-SIX THOUSAND TWO HUNDRED AND SIXTY-ONE RAND AND SEVENTY-EIGHT CENTS) (Excluding VAT) per month;
- (b) Council approves the deviation from paragraph 18 of the Administration of Immovable Property Policy in order to renew the current lease

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agreement with the Applicant for a period of 13 (THIRTEEN) months without following a competitive process; and

- (c) Council approves the deviation from paragraph 20.1(b) of the Administration of Immovable Property Policy in order to renew the current lease agreement with the Applicant for a period of 13 (THIRTEEN) months without following a public participation process.

7. Financial Implications

The Municipality stands to gain a rental amount of R26,261.78 (TWENTY-SIX THOUSAND TWO HUNDRED AND SIXTY-ONE RAND AND SEVENTY-EIGHT CENTS) (VAT excluded) per month, escalating annually on the 1st of July by a percentage equal to the prevailing consumer price index (all items) and service charges.

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

Senior Manager: Expenditure and Assets, Mr J Vorster - (028) 313 8046

“As this is an income generating proposal, with no intention of selling the asset, there is no objection against the application.”

10. Annexures

- Annexure A: Locality Map (1&2)
Annexure B: Lease Area for the whole De Mond

RECOMMENDATION TO THE EXECUTIVE MAYOR:

1. that the short-term renewal of the lease of a portion of Erf 4831 Hermanus to The Klein River Lagoon Park Body Corporate for a period of 13 (THIRTEEN) months from 1 September 2023 for the purpose of a site for mobile park homes, at a rental amount of R26,261.78 (TWENTY-SIX THOUSAND TWO HUNDRED AND SIXTY-ONE RAND AND SEVENTY-EIGHT CENTS) (Excluding VAT) per month, **be approved**; and
2. that the approval in 1 above be subject to Council approving the deviation from paragraphs 18 and 20.1(b) of the Administration of Immovable Property Policy of 2015.

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RECOMMENDATION TO THE COUNCIL:

1. that the deviation from paragraph 18 of the Administration of Immovable Property Policy in order to renew for a short-term period the current lease agreement with The Klein River Lagoon Park Body Corporate for a period of 13 (THIRTEEN) months without following a competitive process, **be approved**; and
2. that the deviation from paragraph 20.1(b) of the Administration of Immovable Property Policy in order to renew for a short-term period the current lease agreement with The Klein River Lagoon Park Body Corporate for a period of 13 (THIRTEEN) months without following a public participation process, **be approved**.

RESPONSIBLE OFFICIAL :	M ERASMUS
TARGET DATE FOR IMPLEMENTATION :	20 NOVEMBER 2023
TARGET DATE TO INFORM APPLICANT :	20 NOVEMBER 2023
TARGET DATE TO INFORM OBJECTOR :	N/A

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11.

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**A Le Roux
18 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 TO THE EXECUTIVE MAYOR:

1. that the short-term renewal of the lease of a portion of Erf 4831 Hermanus to The Klein River Lagoon Park Body Corporate for a period of 13 (THIRTEEN) months from 1 September 2023 for the purpose of a site for mobile park homes, at a rental amount of R26,261.78 (TWENTY-SIX THOUSAND TWO HUNDRED AND SIXTY-ONE RAND AND SEVENTY-EIGHT CENTS) (Excluding VAT) per month, **be approved**; and
2. that the approval in 1 above be subject to Council approving the deviation from paragraphs 18 and 20.1(b) of the Administration of Immovable Property Policy of 2015.

RECOMMENDATION TO THE COUNCIL:

1. that the deviation from paragraph 18 of the Administration of Immovable Property Policy in order to renew for a short-term period the current lease agreement with The Klein River Lagoon Park Body Corporate for a period of 13 (THIRTEEN) months without following a competitive process, **be approved**; and
2. that the deviation from paragraph 20.1(b) of the Administration of Immovable Property Policy in order to renew for a short-term period the current lease agreement with The Klein River Lagoon Park Body Corporate for a period of 13 (THIRTEEN) months without following a public participation process, **be approved**.

RESPONSIBLE OFFICIAL :

M ERASMUS

TARGET DATE FOR IMPLEMENTATION :

13 DECEMBER 2023

TARGET DATE TO INFORM APPLICANT :

13 DECEMBER 2023

TARGET DATE TO INFORM OBJECTOR :

N/A





