

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

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12.

**A PORTION OF REMAINDER ERF 323 ROOI ELS (PUBLIC ROAD), ADJACENT TO ERF 101 ROOI ELS (13 HOTEL CRESCENT, ROOI ELS): RENEWAL OF LEASE OF MUNICIPAL PROPERTY TO MS JENNIFER ANNE BAIGRIE**

**A Le Roux                      Manager: Property Administration  
5 September 2023**

**(028) 316 5623**

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**1. Executive Summary**

To obtain approval to enter into a further lease agreement with J A Baigrie, (hereinafter referred to as “the Applicant”), in respect of municipal property being a portion of Remainder Erf 323 Rooi Els (public road) (±360m<sup>2</sup> in extent) situated in Hotel Crescent, Rooi Els (hereinafter referred to as “the Property”), adjacent to Erf 101 Rooi Els for a period of 9 (NINE) years and 11 (ELEVEN) months for the purpose of retaining a chain across the Property to secure the driveway. The locality map is attached hereto as “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)

**6. Background/Discussion/Evaluation/Conclusion**

**Background/Discussion**

The Applicant is the owner of Erf 101 Rooi Els, adjacent the lease area. The Applicant has been using the Property for over 30 years as part of her driveway and as an entrance to her property.

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The Applicant explained that the purpose of the chain is to avoid vehicles driving onto the Property as the road does not provide vehicular access to the ocean nor parking space, which results in drivers ending up in her driveway and forcing such drivers to reverse back up the steep incline with poor visibility as there is also no space to turn around. Drivers are not able to observe this when entering the undeveloped gravel road because of its overgrown nature.

The last lease agreement was for a period of 9 (NINE) years and 11 (ELEVEN) months which commenced on 1 May 2013 and expired on 31 March 2023 for the purpose erecting a chain to secure the driveway.

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 her and due to an application, the Applicant submitted to purchase the Property.

The Applicant submitted an application to purchase the Property and the process for the sale of the Property was commenced with by the Property Administration Department. This matter will be dealt with separately and a report will serve before Council in due course.

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**

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***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;**
- 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 lease is for a long term the income value will not be close to R10 million. The Property is not a business site and cannot be used to generate an income. As the Property is adjoining the property of the Applicant and no other applications for the lease of the Property were received, considering the size and the fact that the Applicant has been using the Property for many years without receiving complaints from the public it is therefore recommended that the Property be leased directly to the Applicant without following a competitive process.

**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 17 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 Overstrand Herald on 7 September 2023 for a 30 (THIRTY) day comment/objection period. No objections have been received.

**Paragraph 24: “The fair market value for the alienation of, the rental 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).”.**

A valuation was done in 2012 by Boland Valuers BK to determine the marked related rental per month. The monthly rental was determined at an amount of R0.60/m<sup>2</sup> (Sixty Cents per square metres) (VAT excluded), the lease area was ±300m<sup>2</sup> in extent which calculated to an amount of R180.00 (One Hundred and Eighty Rand) (VAT excluded) per month.

The rental amount escalated annually, and the current rental R0.99/m<sup>2</sup> (VAT excluded) per month which is the escalated amount of the initial lease agreement.

**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 Overstrand Herald on 7 September 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 April 2023 at a rental amount of R0.93/m<sup>2</sup> (NINETY THREE CENTS PER SQUARE METRE) (VAT excluded) per month from 1 April 2023 and a rental amount of R0,99/m<sup>2</sup> (NINETY NINE CENTS PER SQUARE METRE) (VAT excluded) per month from 1 July 2023.

**7. Financial Implications**

The Municipality stands to gain rental in the amount of R0.93/m<sup>2</sup> (NINETY THREE CENTS PER SQUARE METRE) (VAT excluded) per month from 1 April 2023 to 30 June 2023 and a rental amount of R0,99/m<sup>2</sup> (NINETY NINE CENTS PER SQUARE METRE) (VAT excluded) per month from 1 July 2023 where after the rental amount will escalate annually on 1 July in accordance with the consumer price index (all items). 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**

**Manager: Biodiversity Conservation, Environmental Management - Mr T Dry**

*“Erf 368 falls under the Coastal Protection zone and is zoned as open space Zone 1 – Nature reserve. As such I do not support the application and suggest that the entrance to the property divert from ERF 323 Transport Zone 2: Roads and parking.”*

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Comments by Property Administration: The current access to the Applicant's property is via erf 323 Rooi Els over a portion of Erf 368 Rooi Els. The Applicant has been leasing the Property from the Municipality for nearly 10 years with no complaints and as indicated on the locality plan, the Applicant will change the access to the property to exclude Erf 368 Rooi Els.

**Senior Town Planner - Ms H van der Stoep**

*"The lease is not supported. At present the applicant have access onto erf 101 via Hotel Crescent over erf 368 (According to the GIS, aerial photo). The latter is zoned Nature Reserve, and the applicant has sufficient space to access erf 101 directly from Hotel Crescent.*

*The lease to restrict the public to make use of Hotel Crescent and the Nature Reserve cannot be allowed. The applicant must secure her properties as allowed by the Overstrand land Use Scheme and National Building Regulations. The Municipality cannot restrict movement of public spaces to the benefit of a private owner. This is in contravention of the Constitution and the Overstrand Land Use Scheme.*

*The application is not supported, and that the applicant rehabilitate the access over the erf 368 (Nature Reserve) and obtain access directly from Hotel Crescent. The lease agreement as it stands now is in contravention of legislation and should not be renewed."*

Comments by Property Administration:

In light of the above comments received from the Town Planning and the Environmental Services the Municipal Manager approved the renewal of the lease in-principle subject to the following conditions that will be included in the lease agreement, should the renewal be approved:

- The lessee only be allowed to erect a chain to prevent vehicular access, but not pedestrian access;
- the approved lease area be amended to be the area indicated on the locality map attached as Annexure "B";
- the lessee be required to make vehicular access to her property from Hotel Crescent on Erf 323 Betty's Bay and rehabilitate the portion of Erf 368 Betty's Bay she has used as part of her driveway; and
- in the event of the application to purchase being successful, the lease be terminated with effect from the date of registration of the transfer in the deed's office.

It must be noted that there is access to the coastal area close enough (approximately 80metres further on – see "Annexure B") and thus the public is no being denied access to the coastal area.

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**Senior Manager: Expenditure & Assets, Hermanus – J Vorster**

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

**10. Annexures**

Annexure A:                      Locality Plan  
Annexure B:                      Access to coastal area

**RECOMMENDATION:**

1. that the lease of municipal property, being a portion Remainder Erf 323 Rooi Els, adjacent to Erf 101 Rooi Els ( $\pm 360\text{m}^2$  in extent) situated in Hotel Crescent, to Ms Jennifer Anne Baigrie for the purpose of retaining a chain to secure the driveway at the rental amount of R0.93/m<sup>2</sup> (NINETY THREE CENTS PER SQUARE METRE) (VAT excluded) per month from 1 April 2023 and a rental amount of R0,99/m<sup>2</sup> (NINETY NINE CENTS PER SQUARE METRE) (VAT excluded) per month from 1 July 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 every year on the 1st of July in accordance with the consumer price index (all items), the next escalation to be on 1 July 2024.

<b>RESPONSIBLE OFFICIAL :</b>	<b>R OCTOBER</b>
<b>TARGET DATE FOR IMPLEMENTATION :</b>	<b>8 NOVEMBER 2023</b>
<b>TARGET DATE TO INFORM APPLICANT :</b>	<b>15 NOVEMBER 2023</b>
<b>TARGET DATE TO INFORM OBJECTOR :</b>	<b>N/A</b>

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

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**12.**

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ERF 101 ROOI ELS (13 HOTEL CRESCENT, ROOI ELS): RENEWAL OF LEASE OF  
MUNICIPAL PROPERTY TO MS JENNIFER ANNE BAIGRIE**

**A Le Roux                      Manager: Property Administration  
5 September 2023**

**(028) 316 5623**

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

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



ANNEXURE B



ACCESS TO COASTAL AREA