

**AGENDA of the
Portfolio Committee: Investment, Infrastructure and Tourism
8 November 2023
(Also the agenda for the Mayoral Committee Meeting: 15 November 2023)**

21.

A PORTION OF REMAINDER ERF 1253 HERMANUS (SITUATED AT 13 FAIRWAY AVENUE, EASTCLIFF): RENEWAL OF LEASE OF MUNICIPAL PROPERTY TO MARIO MARCHIO MINISTRIES

**A Le Roux
5 October 2023**

Manager: Property Administration

(028) 316 - 5623

1. Executive Summary

To obtain approval to enter into a further lease agreement with Mario Marchio Ministries (hereinafter referred to as “the Applicant”) for a period of 9 (NINE) years and 11 (ELEVEN) months in respect of municipal property, a portion of Remainder Erf 1253 Hermanus ($\pm 2,075\text{m}^2$ in extent) situated at 13 Fairway avenue, Eastcliff, Hermanus (hereinafter referred to as “the Property”), for the purpose of beautifying the area, wedding ceremonies, a sports ground, playground and other community related 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 Priorities

Provision of democratic, accountable and ethical governance
Creation and maintenance of a safe and healthy environment
Promotion of tourism, economic and social development

4. Delegated Authority

Executive Mayor

5. Legal Requirements

- Municipal Asset Transfer Regulations (R. 878 of 2008)
- Administration of Immovable Property Policy of the Overstrand Municipality (2015)

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6. Background/Discussion/Evaluation/Conclusion

Background/Discussion

The Applicant is the owner of Erf 7164 Hermanus, adjoining the Property, where a church and school is being operated. The Applicant signed a temporary agreement for a period of 12 (TWELVE) months which expired on 31 December 2012 whereafter a further lease agreement for a period of 9 (NINE) years and 11 (ELEVEN) months was entered into, which commenced on 1 January 2013 and expired on 30 November 2022.

The Applicant applied to renew the lease agreement for a further 9 (NINE) years and 11 (ELEVEN) months. The process for renewal was commenced with timeously, but Town Planning had to investigate the uses on the Property and therefore the renewal process could not be completed before the last agreement expired.

On 6 July 2023, the delegated authority approved in-principle the renewal of the lease for a further period, subject to the public participation being followed and the final approval of the Executive Mayor.

A lease agreement has since been drafted (for administrative and audit purposes) with suspensive conditions included in the agreement stipulating that the lease agreement is subject to a consent use application to be submitted and approved and the Executive Mayor's approval (as delegated authority) allowing the Municipality to enter into the said long term agreement.

No complaints were received from the community during the previous lease periods. The municipal account is paid up to date.

Evaluation

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

The following conditions of the said Policy will 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 –

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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 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 more than R10 million.

As the Property is not classified as a business site and the leasing of the Property to the Applicant (a registered non-profit organisation) is in the interest of the community and especially the children, and they have been leasing it successfully since 2012, it can 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*

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that the right may be granted.”

The Applicant applied for the renewal of the lease agreement which was approved in principle by the Municipal Manager on 6 July 2023 for a period of 9 (NINE) years and 11 (ELEVEN) months, **subject to** a consent use application to be submitted and approved, 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 Village News on 13 October 2023, 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 tariff for the lease of municipal property to registered Social Care Institutions/ Organisations/ NPO’s/ PBO’s/ Sport facilities/ Community organisations will be levied. As the agreement will be backdated from 1 December 2022 the lease will commence on a monthly rental amount of R167.83 (ONE HUNDRED AND SIXTY-SEVEN RAND AND EIGHTY-THREE CENTS) (VAT excluded) per month and from 1 July 2023 an amount of R178.26 (ONE HUNDRED AND SEVENTY-EIGHT RAND AND TWENTY-SIX CENTS) (VAT excluded) per month will be levied. 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.”*

The Property will be inspected by the Property Administration Department at least once a year.

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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 with the Applicant.

B: Advertisement/Notification

An advertisement for the lease of the Property to the Applicant was published in The Village News on 13 October 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 December 2022 at a rental amount of R167.83 (ONE HUNDRED AND SIXTY-SEVEN RAND AND EIGHTY-THREE CENTS) (VAT excluded) per month for the 2022/2023 financial year, and the amount of R178.26 (ONE HUNDRED AND SEVENTY-EIGHT RAND AND TWENTY-SIX CENTS) (VAT excluded) per month from 1 July 2023 for the 2023/2024 financial year.

7. Financial Implications

The Municipality stands to gain rental in the amount of R167.83 (ONE HUNDRED AND SIXTY-SEVEN RAND AND EIGHTY-THREE CENTS) (VAT excluded) per month for the period from 1 December 2022 to 30 June 2023, and the amount of R178.26 (ONE HUNDRED AND SEVENTY-EIGHT RAND AND TWENTY-SIX CENTS) (VAT excluded) per month from 1 July 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, the next escalation to be 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

Town Planner: Mr. P Roux

“The proposed site is situated on Erf 1253 and north of Erf 7164 (Bosko) and in terms of the zoning map the proposed site is situated within an area which is zoned as Open Space Zone 1: Nature Reserve. When perusing the site, it was noted that the area is developed not just with a small area for weddings but also as a sports field. It should be noted that the existing land uses are not

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primary rights in terms of the zoning.

I have searched for any approval of the sports field and could not find any evidence of approval from our side. Further the information provided on the Environmental Authorization it is not clear what was approved by DEADP.

Considering the lack of information to validate the existing structures I am of the opinion that a land use application will be required for the wedding venue and the sports fields, and any other type of use being conducted on Erf 1253 by Bosko which do not relate to nature reserve and conservation use.”

This requirement was included in the lease agreement.

Senior Manager: Operational Services: Mr. T Marx

“The Department: Operational Services, Hermanus, do not have any objection with regards to this application.”

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 & 2: Locality Plan

RECOMMENDATION:

1. that the lease of municipal property, being a portion of Remainder Erf 1253 Hermanus, ($\pm 2,075\text{m}^2$ in extent), to Mario Marchio Ministries, for the purpose of beautifying the area, wedding ceremonies, a sports ground, play area and other community related purposes at a rental amount of R167.83 (ONE HUNDRED AND SIXTY-SEVEN RAND AND EIGHTY-THREE CENTS) (VAT excluded) for the period from 1 December 2022 to 30 June 2023 and a rental amount of R178.26 (ONE HUNDRED AND SEVENTY-EIGHT RAND AND TWENTY-SIX CENTS) (VAT excluded) per month from 1 July 2023 for a period of 9 (NINE) years and 11 (ELEVEN) months 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 tariffs stipulated in the Annual Budget as approved by Council, the next escalation to be on 1 July 2024.

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RESPONSIBLE OFFICIAL:	R OCTOBER
TARGET DATE FOR IMPLEMENTATION:	6 DECEMBER 2023
TARGET DATE TO INFORM APPLICANT:	13 DECEMBER 2023
TARGET DATE TO INFORM OBJECTOR:	N/A

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**A Le Roux
5 October 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:

6 DECEMBER 2023

TARGET DATE TO INFORM APPLICANT:

13 DECEMBER 2023

TARGET DATE TO INFORM OBJECTOR:

N/A



