

**AGENDA of the  
Portfolio Committee : Planning and Development  
17 March 2026  
(Also the agenda for the Mayoral Committee Meeting : 25 March 2026)**

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7.

**A PORTION OF REMAINDER ERF 4771 HERMANUS: LEASE OF MUNICIPAL PROPERTY TO CAPE TOWN FISH MARKET V AND A WATERFRONT (PTY) LTD**

**A Le Roux  
18 February 2026**

**Divisional Manager: Property Management**

**(028) 316 - 5623**

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**1. Executive Summary**

To consider the request of Cape Town Fish Market V and A Waterfront (Pty) Ltd (hereinafter referred to as the "Lessee") to approve their request for a Relief Event as submitted in terms of the lease agreement entered into between the Municipality and Cape Town Fish Market V and 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 known as "Nautilus Restaurant" hereinafter referred to as "the Property", for a lease period of 25 (TWENTY-FIVE) years with an additional approximate 2 (TWO) years for the development, management, lease, and maintenance of municipal property as a restaurant. See the locality map attached hereto marked Annexure "A" indicating the Property as Site A.

**2. Service Delivery and Budget Implementation Plan - IGNITE**

Planning and Development  
Property Management

**3. Compliance with Strategic Priorities**

Provision of democratic, accountable and ethical governance

**4. Delegated Authority**

None

**5. Legal Requirements**

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

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

**Background/Discussion**

HISTORY

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Erf 4771 Hermanus, on which the Property is located, is zoned as Open Space Zone 2: Public Open Space. The Property is currently vacant but was historically used as a restaurant known as the Nautilus Restaurant.

The aim of the project is to develop another restaurant on the footprint of the old restaurant. The footprint of the proposed development is  $\pm 500\text{m}^2$ . The Municipality has already done an extensive environmental study and received Environmental Authorisation for the development of the restaurant.

After a competitive bidding process was followed and the tender was awarded to Cape Town Fish Market V and A Waterfront (Pty) Ltd, Council resolved as follows at a meeting held on 11 December 2024:

- “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 V and A Waterfront (Pty) Ltd for the development, management, lease and maintenance of municipal property as a restaurant at an initial rental amount of R80,000.00 (EIGHTY THOUSAND RAND) (VAT included) per month for a lease period of 25 (TWENTY-FIVE) years 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 first escalation to be 1 July 2026.”*

#### LEASE AGREEMENT

A lease agreement was entered into between the Municipality and the Lessee on 12 April 2024, with an effective date of 1 April 2024 and a commencement date, from when rental will be payable, of 1 April 2026.

The following main clauses of this lease agreement are applicable to this report:

#### **“1. DEFINITIONS**

1.1.7	<i>Commencement Date:</i>	<i>means at the most 2 (two) years from the Effective Date;</i>
1.1.8	<i>Completion Date:</i>	<i>means the date the buildings are completed, the occupancy certificate is issued and the restaurant start operating;</i>
1.1.13	<i>Effective Date:</i>	<i>means 1 April 2024;</i>
1.1.22	<i>Lease Term:</i>	<i>means a period of 25 (twenty-five) years calculated from the Commencement Date;</i>

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**5. RENTAL**

5.2. *Rental will become payable on the Commencement Date or the date the Development is completed (“Completion Date”), whichever is the earliest.*

**27. RELIEF EVENT, FORCE MAJEURE AND MATERIALLY ADVERSE GOVERNMENT ACTION**

**27.1 Relief Event**

27.1.1 *If and to the extent that a Relief Event:*

27.1.1.1 *directly causes a delay in the operationalisation of the Development; and/ or*

27.1.1.2 *materially adversely affects the ability of the LESSEE to perform any of its obligations under this Agreement,*

*then the LESSEE shall be entitled to apply for relief from any rights of the LESSOR arising under clauses 21.2.3 and 22.*

27.1.2 *To obtain Relief, the LESSEE must:*

27.1.2.1 *as soon as practicable, and in any event, within 10 (ten) Business Days after it became aware that the Relief Event has caused or is likely to cause delay and/or materially adversely affect the ability of the LESSEE to perform its other obligations, submit to the LESSOR a notice of its claim for relief from its obligations under this Agreement, including full details of the nature of the Relief Event, the date of occurrence and its likely duration;*

27.1.2.2 *within 10 (ten) Business Days of receipt by the LESSOR of the notice referred to in clause 27.1.2.1 above, give full details of the relief claimed; and*

27.1.3 *In the event that the LESSEE has complied with its obligations under clause 27.1.2 above and the Parties have mutually agreed as to the extent of relief required, then:*

27.1.3.1 *the scheduled operationalisation date of the Development shall be postponed by such time as shall be reasonable for such a Relief Event, taking into account the likely effect of delay; and/or*

27.1.3.2 *the LESSOR shall not be entitled to exercise its rights to terminate this Agreement under*

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*clause 22 or its right to claim damages under clause 21; and*

*27.1.3.3 The LESSEE shall only pay a pro rata portion of the Rental should the Relief Event occur during the Lease Term.*

*27.1.3.4 The LESSEE shall notify the LESSOR if at any time it receives or becomes aware of any further information relating to the Relief Event, giving details of that information to the extent that such information is new or renders information previously submitted materially inaccurate or misleading.*

*27.1.4 In the event of a Relief Event continuing for a period in excess of 120 (one hundred and twenty) Business Days the Parties shall meet in order to find a mutually satisfactory solution for dealing with such prolonged Relief Event failing which the matter shall be dealt with in accordance with clause 20.*

*27.1.5 If the Parties cannot agree on the extent of the relief required, or the LESSOR disagrees that a Relief Event has occurred or that the LESSEE is entitled to any extension of the scheduled operationalisation date and/or relief from other obligations under this Agreement, provided that the Parties shall first attempt to resolve the matter in accordance with clause 20 (dispute resolution).*

**46. RESOLUTIVE CONDITIONS**

*46.1. The LESSEE must complete (“Completion Date”) the Development on the Land within a period of 2 (two) years from the Effective Date of this Agreement, which time period of 2 (two) years may on prior written application of the LESSEE to the LESSOR stating the reasons for the request, be extended by consent of the LESSOR given under the hand of the delegated authority, which consent will not be withheld unreasonably.*

*46.2. Any consent to extension as indicated in clause 46.1 above shall not affect the Commencement Date and the responsibility to pay the Rental. The LESSEE will still be liable to pay Rental from the Commencement Date, irrespective of any extension given.*

*46.3. Should the LESSEE fail to fulfil the condition contained in clause 46.1 above, this Agreement shall lapse and be of no force and effect. Should this Agreement lapse, the parties shall be restored to their positions as if this Agreement had never been entered into, save for*

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*any expenditure or costs incurred in respect of this Agreement, which expenses or costs are not recoverable from the LESSOR by the LESSEE.”*

As a valid lease agreement was entered into, the Lessee proceeded with the necessary processes until such time their building plans for the proposed development were approved. The Lessee has been striving to adhere to the conditions of the lease to the best of their ability in order to finalise the development.

### LEGAL PROCEEDINGS

On 12 May 2025, John Anthony Armstrong and 2 Others commenced with litigation against the Municipality and the Lessee through a Notice of Motion which was served on the Municipality. In terms of this Notice of Motion, the zoning of the Property was challenged, and it was prayed that, on that basis, the approval of the building plans be found unlawful, reviewed, and set aside and that no building activities may commence before the Property is zoned correctly.

By agreement between the parties the matter was settled on the basis that the Lessee would submit a land use planning application (“consent use”) for the proposed development on the Property. This application is currently under consideration and did follow a public participation process.

The above had the effect that the Lessee had to request for an extension of time in terms of clause 46 of the lease agreement (to be approved by the delegated authority) as well as relief as made provision for in clause 27 of the lease agreement.

### APPLICATION IN TERMS OF CLAUSE 27 OF THE LEASE AGREEMENT

The Lessee subsequently submitted the following request:

*“1. Reference*

*We refer to the lease agreement “HVK 4771 – CTFM” between Overstrand Municipality (“the Lessor”) and Cape Town Fish Market Clocktower V&A Waterfront (Pty) Ltd (“the Lessee”) in respect of a portion of Remainder Erf 4771, Hermanus.*

*This letter is submitted at Council’s request as a formal application in terms of clause 46 and clause 27.1 of the lease, and to place on record a proposed contractual adjustment to the Effective Date.*

*2. Relief Event – pending Consent Use (Clause 27.1)*

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- 2.1 *The Lessee's ability to proceed with the Development and to operationalise the restaurant is presently delayed by the statutory land use processes required for Consent Use and related approvals, including:*
- *processing of the Consent Use application;*
  - *public participation and objections; and*
  - *referral to and decision by the Municipal Planning Tribunal.*
- 2.2 *These processes, their timeframes, and the objections lodged are all outside the reasonable control of the Lessee and constitute a "delay in obtaining any consent or authorisation beyond the control of the Lessee" as contemplated in the definition of a Relief Event and clause 27.1.*
- 2.3 *In accordance with clause 27.1.2, the Lessee hereby gives formal notice of its claim for Relief, on the basis that the Relief Event:*
- *directly causes a delay in the operationalisation of the Development; and*
  - *materially adversely affects the ability of the Lessee to perform certain of its obligations under the Agreement within the originally contemplated timeframes.*
- 2.4 *The Relief sought is:*
- *confirmation by the Lessor that the current delay in finalising the Consent Use and related approvals is accepted as a Relief Event in terms of clause 27.1; and*
  - *that the Lessor will not exercise any rights to terminate the Agreement or claim damages by reason of such delays, provided the Lessee continues to prosecute the applications diligently and in good faith.*
3. *Application for Extension under Clause 46*
- 3.1 *Clause 46.1 requires the Lessee to complete the Development within 2 (two) years from the Effective Date, subject to the Lessee's right, on prior written application stating reasons, to obtain an extension with the consent of the delegated authority.*
- 3.2 *The Lessee is presently unable to complete the Development within the original 2-year period solely because the prerequisite planning approvals (including Consent Use) have not yet been finalised. The Lessee has at all times acted diligently and in good faith and has no control over the pace or outcome of the land use processes.*
- 3.3 *In the premises, and in order to prevent the agreement from lapsing in terms of clause 46.3 for reasons beyond the Lessee's control, the*

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*Lessee hereby formally applies, in terms of clause 46.1, for an extension of the Completion Date, with the following structure:*

- *that the period for completion of the Development be extended to a date 24 (twenty-four) months after the date on which the Consent Use approval is granted by the competent authority; or*
- *such equivalent 2-year extension from Consent Use approval as the Municipality may prefer to record in a simple, clear calendar date once Consent Use is approved.*

3.4 *This approach aligns the completion obligation with the actual timing of the land use approval, ensures that the Development can lawfully proceed, and preserves the Municipality's and the Lessee's common objective of delivering the approved restaurant development on the site.*

3.5 *We respectfully submit that, in the circumstances and given the Relief Event described above, it would be reasonable for the delegated authority to grant the requested extension in terms of clause 46.1.*

4. *Request to Amend Effective Date to 1 April 2026*

4.1 *Separately from, and in addition to, the above application under clauses 27.1 and 46, the Lessee requests that the parties formally amend the Agreement so that the Effective Date is recorded as 1 April 2026 instead of 1 April 2024.*

4.2 *The reasons for this request are:*

- *The parties understood and accepted at the time of contracting that Development and trading cannot lawfully commence until all requisite land use and statutory approvals have been obtained.*
- *As matters have unfolded, the timing of the Consent Use and related approvals has shifted significantly, such that substantial time under the current Contractual Term would elapse without any realistic ability to commence lawful Development.*
- *Aligning the Effective Date with 1 April 2026 better reflects the practical and lawful commencement of the project, avoids unnecessary administrative and financial complications for both parties, and preserves the full economic value of the 25-year Lease Term once the Development can realistically proceed.*

4.3 *We are aware that clause 39 requires any variance of the Agreement to be in writing and signed by both parties. We therefore propose that, should Council and the delegated authority be amenable in principle, a short addendum be prepared to:*

- *amend the definition of Effective Date to 1 April 2026; and*

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- *confirm that all other provisions of the Agreement remain unchanged, save to the extent adjusted by the extension granted under clause 46 as requested above.*

**5. Summary of Relief Requested**

*For ease of reference, the Lessee requests that:*

**5.1 In terms of clause 27.1:**

- *the current delays in obtaining Consent Use and related statutory approvals be formally recognised as a Relief Event; and*
- *the Lessor confirms that no rights under clauses 21.2.3 and 22 will be exercised against the Lessee by reason only of such delays, provided the Lessee continues to act diligently and in good faith.*

**5.2 In terms of clause 46:**

- *the Completion Date obligation be extended so that the Lessee is required to complete the Development within 2 (two) years from the date on which the Consent Use approval is granted.*

**5.3 In terms of clause 39 (variation of agreement):**

- *the Effective Date be amended to 1 April 2026, with a short written addendum to be drafted by the Municipality for signature by both parties.*

*We trust that this application accords with Council’s request that the Lessee apply under clause 46 and clause 27.1. We remain committed to implementing the approved Development in accordance with the tender, the Environmental Authorisation, and the Municipality’s policies, and we are available to meet with the relevant officials at short notice to discuss and finalise the proposed extension and addendum.”*

**Evaluation**

In terms of the lease agreement, the term “Relief Event” is defined as follows:

- any fire, explosion, tempest, flood, drought (to the extent it does not constitute an event of Force Majeure), earthquakes, wind and/or hailstorms, ocean wave action, riots, official or unofficial strikes, go slows or other such labour disputes generally affecting the relevant industry or a significant sector of it, lock-out and civil commotion;*
- without limiting the obligations of the LESSEE in terms of this Agreement, any failure by the LESSOR or any responsible authority, utility or other like body to carry out works or provide services related to the Development;*
- any accidental loss or damage to the Leased Premises;*
- any off site failure or shortage of power, fuel or transport;*

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- (e) *any blockade or embargo which does not constitute an event of Force Majeure;*
- (f) *the discovery of any heritage objects or resources that could not reasonably have been discovered by proper due diligence;*
- (g) *any delay in obtaining any consent or authorisation beyond the control of the LESSEE;*

*unless any of the events listed in clauses (a) to (g) inclusive arises, directly or indirectly, as a result of any negligence, wilful conduct or default of the LESSEE or any subcontractor appointed by it;*

As mentioned above, the relevant clause stipulates as follows:

*12.1.1 If and to the extent that a Relief Event:*

- 12.1.1.1 directly causes a delay or interruption in putting into operation any phases of the Development; or,*
- 12.1.1.2 materially adversely affects the ability of the Lessee to perform and/or comply with any of its obligations under this Agreement,*

*then the Lessee shall be entitled to apply for relief from any rights of the Lessor arising from clauses 5, 19.2.3 and 20.*

The commencement of legal proceedings by a third party as well as the outcome that the land use planning process which had to be followed, as agreed between the parties, does materially and adversely affect the Lessee's ability to perform or comply with their obligations under the lease. In effect the whole proposed development is affected as it cannot be expected from the Lessee to incur any further financial capital expenditure on the Property pending the outcome of the unexpected land use planning process they have now been required to submit.

If a Relief Event is approved as per their request, it will have the effect that:

- (a) The Effective date (currently 1 April 2024) will move to 1 April 2026.
- (b) The Completion date will stay the same, but it will be calculated at 2 (two) years from the date the Land Use Planning approval (consent use approval) is obtained and not calculated from the Effective date (new proposed date of 1 April 2026) as currently provided for in clause 46 of the lease agreement.
- (c) The Commencement date (currently 1 April 2026) will move to 1 April 2028.
- (d) Rental in the amount of R80,000.00 (EIGHTY THOUSAND RAND) (VAT included) per month will only be payable from the new Commencement date (1 April 2028) or the new Completion date, the latter being at the most

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- 2 (two) years from the date the Land Use Planning approval (consent use approval) is obtained, whichever is the earliest.
- (e) Condition 2 of the Council resolution dated 11 December 2024 will have to be amended to indicate that the first escalation of rental will on 1 July 2029 (it should have originally been 1 July 2027 and not 1 July 2026).
  - (f) All the timelines as stipulated in the lease agreement will effectively move on with approximately 2 (two) years.
  - (g) If the Lessee complies with the amended timelines, the Municipality may not be entitled to terminate the lease agreement.

The lease in this regard also stipulates that if the Municipality and the Lessee cannot agree on the extent of the relief required, or the Municipality disputes that a Relief Event has in fact occurred or that the Lessee is entitled to an extension of the scheduled date of putting into operation the relevant phase of the development or continuing with the development and/or to claim relief from other obligations under the lease agreement, either Party may require that the matter be resolved in accordance with clause 18. Thus, the Lessee can commence with a dispute resolution process. During a dispute resolution process, the Municipality will not be able to proceed with any new process regarding the Property.

The Lessee's request is self-explanatory and detailed. They are committed to honour the terms of the lease agreement and proceed with the development, but due to the above unforeseen circumstances (court proceedings, consent use application, etc.) they could not commence with any activities. They have already submitted building plans, which had to be withdrawn because of the above. They are not generating any income currently from the Property but have incurred substantial expenses relating, and incidental, to the Property. The inability to keep to the timelines stipulated in the lease, to finish the development to be able to pay rental was at all times beyond their control.

The Administration is in full support of the request. The request does not contradict the tender as advertised as the latter did not contain an effective or commencement date. If approved, an addendum to the lease agreement can be prepared and signed to give effect to the approval. There will be no need for a new lease agreement.

### **Conclusion**

Considering the above discussion, it is recommended that the request for relief be approved as follows:

- (a) That the Effective date (currently 1 April 2024) as contained in the lease agreement dated 12 April 2024 to be amended to reflect 1 April 2026.
- (b) That the Completion date be calculated at 2 (two) years from the date the Land Use Planning approval (consent use approval) is obtained and not

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calculated from the Effective date (new proposed date of 1 April 2026) as currently provided for in clause 46 of the lease agreement.

- (c) That the Commencement date (currently 1 April 2026) be amended to reflect 1 April 2028.
- (d) Condition 2 of the Council resolution dated 11 December 2024 be amended to indicate that the first escalation of rental will on 1 July 2029.

## **7. Financial Implications**

The Municipality will still receive rental in the amount of R80,000.00 (EIGHTY THOUSAND RAND) (VAT included) per month, but the payment thereof will be effective from 1 April 2028 or the date the restaurant is operational ("Completion date"), whichever is the earliest.

## **8. Staff Implications**

None

## **9. Comments from other Departments, Divisions and Administrations**

### **Principal Legal Advisor- Mr J Wilkinson**

*"Having due regard to the history of this matter, including the unforeseen litigation and the consequences flowing therefrom, the Lessee's bona fide effort to honour the terms of the lease agreement, as well as the comprehensive request for a Relief Event submitted by the Lessee, it is submitted that it is in the interest of all parties that the request be granted."*

## **10. Annexures**

Annexure A: Locality map

### **RECOMMENDATION TO THE COUNCIL:**

1. that the request for the following request for relief, in terms of clause 27 of the lease agreement dated 12 April 2024 as submitted by Cape Town Fish Market V and A Waterfront (Pty) Ltd in relation to the lease, development, management and maintenance of municipal property, being a portion of Remainder Erf 4771 Hermanus (±500m<sup>2</sup> in extent), **be approved:**
  - (a) That the Effective date (currently 1 April 2024) as contained in the lease agreement dated 12 April 2024 to be amended to reflect 1 April 2026.
  - (b) That the Completion date be calculated at 2 (two) years from the date the Land Use Planning approval (consent use approval) is obtained and not calculated from the Effective date (new proposed date of 1 April 2026) as currently provided for in clause 46 of the lease agreement.

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- (c) That the Commencement date (currently 1 April 2026) be amended to reflect 1 April 2028; and
2. that condition 2 of the Council resolution dated 11 December 2024 be amended to indicate that the first escalation of rental will on 1 July 2029.

<b>RESPONSIBLE OFFICIAL :</b>	<b>A LE ROUX P ROUX J WILKINSON</b>
<b>TARGET DATE FOR IMPLEMENTATION :</b>	<b>20 APRIL 2026</b>
<b>TARGET DATE TO INFORM APPLICANT :</b>	<b>20 APRIL 2026</b>
<b>TARGET DATE TO INFORM OBJECTOR :</b>	<b>N/A</b>

