

**AGENDA of the
Portfolio Committee : Planning and Development
1 October 2024
(Also the agenda for the Mayoral Committee Meeting : 16 October 2024)**

6. Background/Discussion/Evaluation/Conclusion

Background/Discussion

The Municipality currently has a lease agreement with Milk at the Beach (Pty) Ltd for who took over the lease of the Property from CJ & JC Partnership (who initially had the lease agreement) for the remainder of the period of 9 (NINE) years and 11 (ELEVEN) months for the management of a restaurant. The lease agreement will expire on 31 May 2025. The current lease amount for the lease of the Property is R54,582.08 (FIFTY-FOUR THOUSAND FIVE HUNDRED AND EIGHTY-TWO RAND AND EIGHT CENTS) (VAT Excluded) per month.

The Property is ±750m² (APPROXIMATELY SEVEN HUNDRED AND FIFTY SQUARE METRES) in extent which includes the following:

(a) Milk on the Beach Restaurant consists of the following improvements specifically designed for restaurant purposes.

• Kitchen space	30m ²
• Inner restaurant	105m ²
• Deck	49m ²
• Wooden deck	36m ²
• 6x female toilets	21m ²
• 1x male toilet and urinal	10m ²
• 4x Staff toilets	12m ²
TOTAL:	263m²

(b) The ice-cream and waffle house, which is slightly less elevated than the restaurant restaurant, consists of the following.

• Wooden Kiosk deck	59m ²
• Kiosk & Kitchen	40m ²
TOTAL:	99m

Evaluation

The following conditions of the Administration of Immovable Property Policy of the Overstrand Municipality apply:

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

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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”.**

As (i) the expected rental income for the proposed lease period will be in excess of R10,000,000.00 (TEN MILLION RAND), (ii) many parties showed interest in managing a kiosk and restaurant from the Property, (iii) the Property is well situated, and (iv) the intended use of the Property will be for business purposes, the Property can only be made available for leasing by means of a competitive process at a market related rental.

Paragraph 19: “Long term lease of municipal immovable property with an income value in excess of R10 million:

- 19.1 The Municipality may grant a long-term lease of municipal immovable property with an income value in excess of R10 million only after:**
 - (a) the Accounting Officer has, through the Property Administration Department, conducted a public participation process; and**
 - (b) the Municipal Council has approved in principle that the right may be granted.**
- 19.2 The public participation process in terms of paragraph 19.1(a) may only be authorised by the Municipal Council. A request to the Municipal Council for authorisation of a public participation process must be accompanied by:**
 - (a) the reasons for the proposal to grant the long term lease;**
 - (b) any expected benefits to the Municipality as a result of the lease;**
 - (d) any expected proceeds to be received by the Municipality from the proposed lease, and**
 - (e) any expected gain or loss to be realised or incurred by the Municipality arising from the lease. ”**
- 19.3 If the public participation is authorised, the accounting officer must at least 60 days before the meeting of Council at which the determinations referred to in 19.1(b)(i) and (ii) above are considered**
 - (a) make public the proposal to lease the asset;**
 - (b) invite the local community and other interested parties to submit comments or representations in respect of the proposed lease of the asset;**

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(c) *solicit the views and recommendations of the National Treasury and the relevant Provincial Treasury on the matter.*

It is requested that Council authorises the Accounting Officer, through the Property Management Division, to commence with the public participation process as required above. After the public participation process, a report will serve before Council requesting the approval in principle of the lease of the Property by means of a competitive process, where all the comments will be included in order for Council to take an informed decision.

The reason for proposing a long term lease of 9 (NINE) years and 11 (ELEVEN) months and not a short term lease of 3 (THREE) years is due to the fact that anyone bidding for the lease of a kiosk and a restaurant will be investing money in preparing the Property for their specific type of restaurant business and it just makes more business sense to lease a property for a long term rather than a short term period. A long-term lease will also encourage more interested parties to submit bids for the lease of the prime Property. A lease for a term in excess of 9 (NINE) years and 11 (ELEVEN) months is not recommended as this will require a further registration in the Deeds Office, which registration will burden the Property (which also consists of road remainders, public places, etc.).

The Municipality stands to gain a rental income in the amount of at least R66,000.00 (SIXTY-SIX THOUSAND RAND) (VAT Excluded) per month for the lease of the Property. As the public ablution facilities are included in the lease area it is to the advantage of the Municipality to lease out the Property as the lessee will be responsible for the upkeep of the ablution facilities, which includes the supply of, amongst others, toilet paper, cleaning materials, labour, etc. The Municipality will also be able to levy for municipal services which will be an additional income.

Another benefit to the Municipality by leasing out the Property is that the lessee will be responsible for the maintenance of the buildings, which will lessen the burden placed on the Municipality's maintenance budget. The Property is an important attraction, not only for tourists visiting the area but also the community of the Overstrand Municipality and it is to the advantage of the Municipality if the Property is managed and used to its full potential.

The gain for the Municipality by making the Property available to lease far outweighs any loss. The Municipality is not in the business of managing restaurants, does not have the necessary experienced personnel to manage a restaurant, does not have the capacity and lastly if managed internally, will have to bear all the services costs departmental (for which there must be budgeted for).

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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)”.*

HCB Valuations and Services (Pty) Ltd determined the market related rental at an amount of R66,000.00 (SIXTY-SIX THOUSAND RAND) (VAT Excluded) per month which amount will be included in the tender document as an indicative value.

Paragraph 40: *“Rental, except where it is decided otherwise by the Municipality, shall escalate on the 1st of July every year, by a percentage fixed in accordance with the prevailing consumer price index (all items).”*

A clause to this effect will be included in the lease agreement.

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.

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.

Conclusion

Considering the above discussion, it is recommended that approval be given to the Accounting Officer, via the Property Management Division, to commence with the public participation process for the proposed lease of the Property as required by the MATR and Administration of Immovable Property Policy.

7. Financial Implications

The estimated cost of the public participation process (media) will depend on which newspaper is used. The estimated costs per newspaper, taking into consideration recent advertisements placed, are as follows:

Hermanus Times:	±R 5,130.00 (VAT Incl.)
Village News:	±R 4,982.50 (VAT Incl.)

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Overstrand Herald:	±R 1,862.30 (VAT Incl.)
Gans Berg News:	±R 3,114.00 (VAT Incl.)
Gansbaai Courant:	±R 3,950.00 (VAT Incl.)
Die Burger:	±R13,590.00 (VAT Incl.)

There is sufficient funding for the advertisement.

Source of Funding: Operating Budget Provisions

B Key:	20240627098251
Cost Account:	18880221470000
Item Description:	Expenditure: Operational Cost: Advertising, Publicity and Marketing: Corporate and Municipal Activities
Budget Provision 2024/25:	R150,000.00
Spent to Date/Committed:	R 19 810.26
Balance Available:	R130 189.74(as on 11 September 2024)

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

Divisional Manager: Expenditure, Fleet and Asset Management - 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 A:	Locality map
Annexure B:	Lease drawing

RECOMMENDATION TO THE COUNCIL:

that the Accounting Officer, via the Property Management Division, **be authorised** to commence with the public participation process required by paragraph 19.1(a) of Council’s Administration of Immoveable Property Policy (2015), for the long term lease of a portion of Remainder Farm Nr 581, situated in Onrustrivier, currently known as “Milk on the Beach Restaurant” at Onrus Beach (±750m² in extent), for restaurant purposes, and to report the outcome of the public participation process thereon to Council in order for it to make a reasoned, deliberate decision in principle to proceed with the proposed competitive process for the said long term lease.

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RESPONSIBLE OFFICIAL :	M ERASMUS
TARGET DATE FOR IMPLEMENTATION :	17 NOVEMBER 2024
TARGET DATE TO INFORM APPLICANT :	N/A
TARGET DATE TO INFORM OBJECTOR :	N/A

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4.

A PORTION OF REMAINDER FARM NR 581 SITUATED IN ONRUSTRIVIER, KNOWN AS “MILK ON THE BEACH RESTAURANT” AT ONRUS BEACH, APPROVAL FOR COMMENCEMENT OF A PUBLIC PARTICIPATION PROCESS

**A Le Roux
20 August 2024**

Divisional Manager: Property Management

(028) 316 - 5623

THIS MATTER SERVED BEFORE THE PLANNING & DEVELOPMENT PORTFOLIO COMMITTEE ON 1 OCTOBER 2024, WHICH COMMITTEE RECOMMENDED AS FOLLOWS:

RECOMMENDATION TO THE COUNCIL:

that the Accounting Officer, via the Property Management Division, **be authorised** to commence with the public participation process required by paragraph 19.1(a) of Council’s Administration of Immovable Property Policy (2015), for the long term lease of a portion of Remainder Farm Nr 581, situated in Onrustrivier, currently known as “Milk on the Beach Restaurant” at Onrus Beach (±750m² in extent), for restaurant purposes, and to report the outcome of the public participation process thereon to Council in order for it to make a reasoned, deliberate decision in principle to proceed with the proposed competitive process for the said long term lease.

RESPONSIBLE OFFICIAL :

M ERASMUS

TARGET DATE FOR IMPLEMENTATION :

17 NOVEMBER 2024

TARGET DATE TO INFORM APPLICANT :

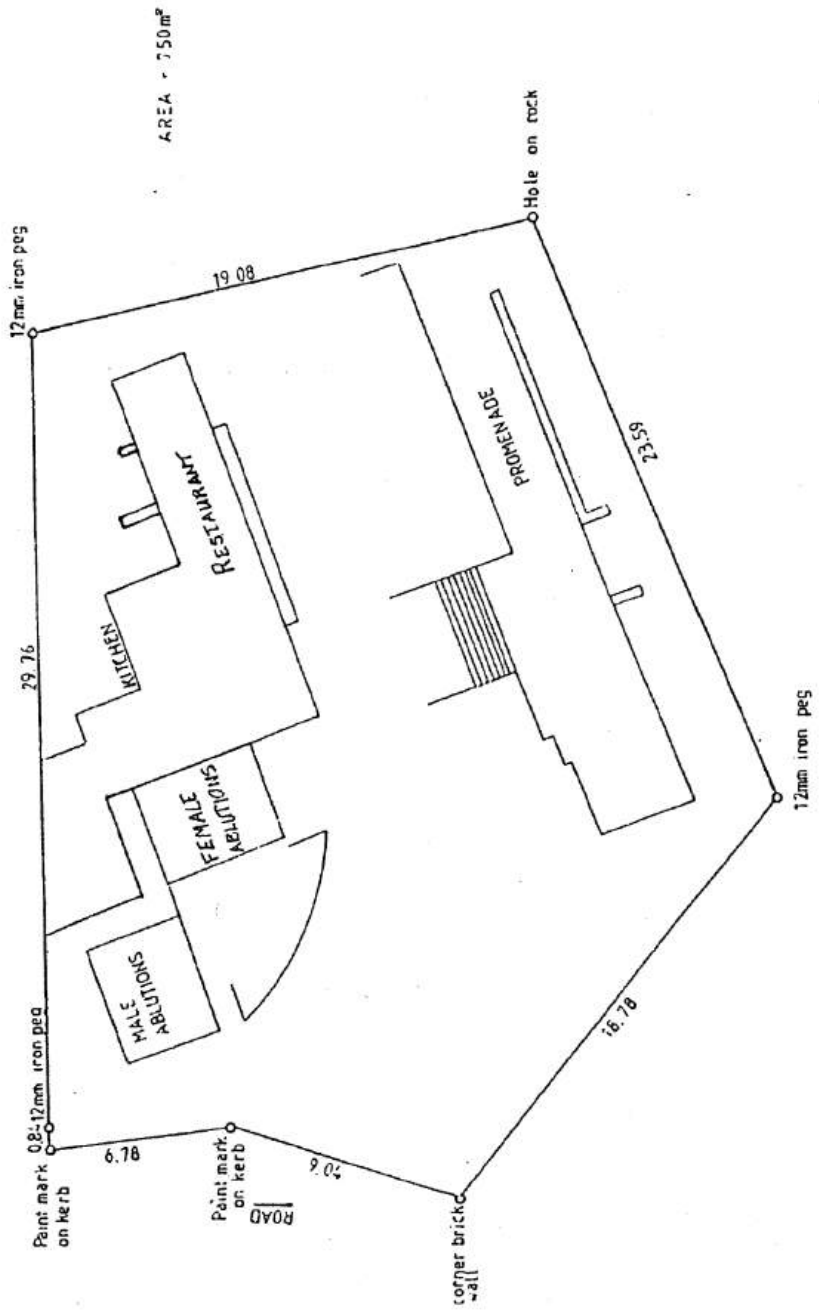
N/A

TARGET DATE TO INFORM OBJECTOR :

N/A

ANNEXURE B

Scale: 1: 200



Pf SPRONK & ASSOCIATES