

**AGENDA of the
Portfolio Committee : Infrastructure & Planning
17 March 2020
(Also the agenda for the Mayoral Committee Meeting : 25 March 2020)**

6.

PORTIONS OF ERVEN 249 AND 832 HERMANUS: DEVIATION FROM PARAGRAPHS 18 AND 20.1(b) OF THE ADMINISTRATION OF IMMOVABLE PROPERTY POLICY OF 2015 ALLOWING THE MUNICIPALITY TO APPROVE A TEMPORARY RENEWAL OF LEASE OF MUNICIPAL PROPERTY TO MR MA DE KLERK

DEVIATION FROM PARAGRAPHS 7.4.1 AND 11.3.2(a)(i)(ii) OF THE CUSTOMER CARE, CREDIT CONTROL AND DEBT COLLECTION POLICY, 2019

7/2/3/1

A le Roux

(028) 316-3724

Manager: Property Administration

10 February 2020

1. Executive Summary

To obtain approval from the Executive Mayor to enter into a further temporary lease agreement with Mr MA de Klerk in respect of portions of Erven 249 and 832 Hermanus for the purpose of the lease, management, sub-letting, supervising and maintenance of the land for informal trading or any other such purposes as may be approved by the lessor in writing; and

To obtain approval from Council for the deviation from paragraph 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 Mr MA de Klerk in respect of portions of Erven 249 and 832 Hermanus for the purpose of the lease, management, sub-letting, supervising and maintenance of the land for informal trading or any other such purposes as may be approved by the lessor in writing without following a public participation and a competitive bidding process.

To further request Council to approve a deviation from paragraphs 7.4.1 and 11.3.2(a)(i) and (ii) of the Customer Care, Credit Control and Debt Collection Policy, 2019, in order to allow Mr MA de Klerk to pay off the arrear municipal account in a period equal to the period requested for the temporary renewal agreement with the Municipality.

2. Service Delivery and Budget Implementation Plan - IGNITE

Infrastructure and Planning
Property Administration
and
Directorate Finance
Department Revenue

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3. Compliance with Strategic Priorities

Provision of democratic, accountable and ethical governance
Provision and maintenance of municipal services

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, 2015
- Customer Care, Credit Control and Debt Collection Policy of the Overstrand Municipality, 2019

6. Background/Discussion/Evaluation/Conclusion

Background

A tender was advertised for the lease and management of the Market Square Stalls situated on portions of Erven 249 and 832 Hermanus for business purposes. The main purpose was to obtain one tenant who can sublease and manage the individual stalls on behalf of the Municipality and who could then take over the total maintenance of the stalls with the management thereof. This is the first time the Municipality attempted this type of venture. The tender was duly awarded to Mr MA de Klerk on 17 July 2015 at a rental amount of R70,000.00 (SEVENTY THOUSAND RAND) (VAT excluded).

Discussion

The Municipality was not able to give possession of the Market Square to Mr MA De Klerk on 1 August 2015 as the previous tenants refused to vacate the stalls. In this regard, court proceedings were launched to obtain a court order for the eviction of the traders who refused to vacate the stalls, which final order was only granted in March 2017. This meant that Mr MA De Klerk could only obtain full occupation of the Market Square stalls as from 1 April 2017 when he could start fully marketing the stalls.

The Municipality was only able to give possession of individual stalls as follows:

- (a) 10 stalls on 1 November 2015;
- (b) 2 further stalls on 1 December 2015;
- (c) 1 further stall on 1 January 2016;

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- (d) 1 further stall on 1 November 2016; and
- (e) All remainder 22 stalls on 1 April 2017.

As partial possession was only given on 1 November 2015, no rental and electricity charges were charged for the months of August 2015, September 2015 and October 2015. Pro rata rental and electricity charges were charged from 1 November 2015 in relation to the number of stalls possession was given to Mr MA De Klerk. The court proceedings were finalised in March 2017 and vacant occupation of the remainder of the stalls were given as from 1 April 2017. Thus Mr MA De Klerk could only start with the whole venture and process of managing the Market Square Stalls when he was given occupation of all the stalls in Market Square that were included in the tender. Due to the loss of time and opportunity to commence with the business venture it was requested that the lease be extended to allow for the months that were lost due to the fact that full occupation could not be given.

The extension of the lease was subsequently approved by the Executive Mayor on 22 May 2018 and the lease agreement was extended to 31 March 2020 at a rental amount of R85,753.25 (VAT excluded) per month (escalation of 7% on 1 July every year).

Since the extension of the lease period, Mr MA de Klerk has experienced several problems with tenants not paying their rental timeously or at all, tenants cancelling their lease agreements due to their businesses taking a fall with the riots (lesser tourists visiting the area, etc.). As some of the tenants are in arrears with the payment of their rental, Mr MA de Klerk obviously is not able to pay his full account and also became quite in arrears with the payment of rental. Of his 40 tenants (some share a stall) only 15 are up to date with the payment of their rental as on date hereof.

Obviously, as Mr MA de Klerk is in arrears with his rental, Overstrand Municipality started charging penalties (interest) and collection charges on his account. Also, auxiliaries are charged against his account which means that his tenants are being penalised as they get lesser electricity units when they buy electricity, irrespective of whether they are the "bad payers" of Mr de Klerk or not. This has caused that tenants refused to pay their rental and in one case a tenant is in the process of starting civil proceedings against him for the collection of an amount of approximately R29,000.00 in auxiliaries that were deducted from his electricity purchases.

Mr MA de Klerk wanted to make an arrangement for the payment of the arrears to ensure that his tenants are not being penalised, but was informed that, in terms of the Customer Care, Credit Control and Debt Collection Policy of the Overstrand Municipality of 2019, he will have to pay 50% of the arrear amount and the balance in three instalments, which he is not able to do as the arrear amount as on 11 February 2020 is R274,288.97 (VAT Excluded).

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The following is suggested:

- (a) Mr MA de Klerk pays the full current account for March 2020 on due date thereof; and
- (b) Mr MA de Klerk pays the full accounts as levied for the temporary renewal months from 1 April 2020 to 30 September 2020 PLUS an additional amount per month plus interest in respect of the arrear account on the due date thereof until the full arrear amount is settled on or before 30 September 2020. In this regard Mr MA de Klerk must sign an acknowledgment of debt for the payment at the Finance Department.
- (c) The Municipality will then defer the arrear portion of Mr MA de Klerk's account (excluding the account of March 2020) until the arrear amount is settled in full. A debt collection process will be followed if the arrangement is not honoured. This will ensure that the tenants of Mr MA de Klerk are not penalised by the auxiliaries.

The request for the temporary renewal of the lease agreement for a period of 6 (SIX) months is to firstly allow the Municipality to have the tender awarded, the long term rental to the successful bidder approved by the Executive Mayor and a new lease agreement to be entered into and secondly to afford Mr MA de Klerk the opportunity to repay his arrear account. If Council approves the deferment of the arrear amount which will have the result that no auxiliaries be charged, Mr de Klerk will stand a better chance of his tenants paying their rental.

Should the lease of the stalls be renewed for a further temporary period it will further contribute to a smoother handing over of the stalls to the successful bidder which will eliminate many of the challenges experienced with the commencement of the lease period with Mr MA de Klerk.

It should be noted that a tender process for the long term lease of the stalls are underway and will be advertised in March 2020.

Evaluation

The following paragraphs of the Administration of Immovable Property Policy are applicable:

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.”**

In this case a direct lease is proposed with a deviation from paragraph 18 in that a competitive process not be followed for the temporary renewal as the adherence to this paragraph of the said Policy will not serve a useful purpose, will be costly and most likely will result in the tender having to be cancelled without awarding it as prospective bidders (lessees) will not be willing to enter into a lease agreement, investing money and time for a lease period of 6 (SIX) months. This temporary renewal period will serve as a bridging period between the current lessee and the successful bidder.

Cognisance should also be had to the fact that should the property be vacant for the period from expiry of the current lease agreement until the time the new lease agreement can commence after awarding of the tender and approval by the Executive Mayor of the long term lease to the successful bidder the reality would be that the property would most likely be vandalised resulting in damages, insurance claims to be made and in all likelihood impacting on the time line of the envisaged commencement and occupation of the stalls. Property Administration currently does not have the capacity to take over the current tenants of Mr de Klerk and it is not advised to take over any tenants that are currently in arrears with their accounts delivered by Mr de Klerk.

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 temporary renewal of the lease of the subject portions of Erven 249 and 832 Hermanus to Mr MA de Klerk subject thereto that the approval of Council is obtained as to the

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deviation from paragraphs 18 of the Policy as requested in this report. An in principle approval for a 6 (SIX) month period was obtained.

In this case, seeing that Mr MA de Klerk has already had agreements for more than 3 years, a further short term lease in respect of the specific portions of Erven 249 and 832 Hermanus will cause the said total lease period to be in excess of three years, which is not permissible in terms of Paragraph 20 of the Policy. A deviation from paragraph 20.1(b) is also requested as the renewal is for a very short period and the public participation process will be very time consuming. The tender for the long term lease are following a competitive process which entails the advertising of the tender.

Simultaneous with this request for a deviation, a further request will be made for the approval by the Executive Mayor of the long term rental (as the total period will be in excess of three years).

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 current lease amount is R91,775.98 (NINETY ONE THOUSAND SEVEN HUNDRED AND SEVENTY FIVE RAND AND NINETY EIGHT CENTS) (VAT excluded) per month. The renewal agreement will continue with this rental amount which will escalate on 1 July 2020 by 7% as per the previous lease agreements.

It is further confirmed that the other Conditions of Lease as stipulated in paragraph 36 - 50 will be included in the lease agreement.

The following paragraphs of the Customer Care, Credit Control and Debt Collection Policy, 2019, are applicable:

Paragraph 11.3.2(a)(i) and (ii): “ARRANGEMENTS THAT CAN BE ENTERED INTO:

11.3.2. Non-residential Customers:

(a) 1st default within a 12-month period:-

- (i) 50% of the outstanding amount plus cost of the credit control actions.**
- (ii) The balance is payable over a maximum period of three months. “**

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In view of the above background and discussion it is recommended that a deviation from this paragraph be approved allowing Mr MA de Klerk to pay off the full arrear amount on the municipal account in a period equal to the remainder of his proposed extended lease agreement with the Municipality.

7. Financial Implications

The Municipality stands to gain a rental amount of R91,775.98 (NINETY ONE THOUSAND SEVEN HUNDRED AND SEVENTY FIVE RAND AND NINETY EIGHT CENTS) (VAT excluded) per month until 30 June 2020 and a rental amount of R98,200.30 (NINETY EIGHT THOUSAND TWO HUNDRED RAND AND THIRTY CENTS) (VAT excluded) per month.

The amount of R331,912.95 (THREE HUNDRED AND THIRTY ONE THOUSAND NINE HUNDRED AND TWELVE RAND AND NINETY FIVE CENTS) (VAT Excluded) as at 26 February 2020, will be paid off in a period equal to the remainder of the proposed extended lease period.

8. Staff Implications

N/A

9. Comments from other Departments, Divisions and Administrations

Senior Manager: Revenue, Ms E Hoonenberg - (028) 313 8149

No objection to the recommendations in the report.

10. Annexures

Annexure A: Locality plan

RECOMMENDATION TO THE EXECUTIVE MAYOR:

1. that the temporary renewal of the lease of municipal property, being portions of Erven 249 and 832 Hermanus, to MA de Klerk for the purpose of the lease, management, sub-letting, supervising and maintenance of the land for informal trading or any other such purposes as may be approved by the lessor in writing for a period of 6 (SIX) months from 1 April 2020 at the monthly rental amount of R91,775.98 (NINETY ONE THOUSAND SEVEN HUNDRED AND SEVENTY FIVE RAND AND NINETY EIGHT CENTS) (VAT excluded) for the period 1 April 2020 to 30 June 2020 and a rental amount of R98,200.30 (NINETY EIGHT THOUSAND TWO HUNDRED RAND AND THIRTY CENTS) (VAT excluded) for the period from 1 July 2020 to 30 September 2020, **be approved;**

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2. that the abovementioned approval be subject to Council approving a deviation from paragraphs 18, 20.1(b) and 24 of the Administration of Immovable Property Policy of 2015; and
3. that the abovementioned approval be subject to Council approving a deviation from paragraph 11.3.2(a)(i) and (ii) of the Customer Care, Credit Control and Debt Collection Policy of 2019 in order to allow Mr MA de Klerk to pay off the arrear municipal account for the lease of a portion of Erf 249 and 832 Hermanus in a period equal to the remainder of the temporary renewal of the lease agreement with the Municipality.

RECOMMENDATION TO THE COUNCIL:

1. that the deviation from paragraph 18 of the Administration of Immovable Property Policy in order to temporary renew the current lease agreement with MA de Klerk for a further 6 (SIX) months from 1 April 2020 until 30 September 2020 without following a competitive process, **be approved**;
2. that the deviation from paragraph 20.1(b) of the Administration of Immovable Property Policy in order to temporary renew the current lease agreement with MA de Klerk for a further 6 (SIX) months without following a public participation process, **be approved**; and
3. that the deviation from paragraph 11.3.2(a)(i) and (ii) of the Customer Care, Credit Control and Debt Collection Policy of 2019 in order to allow Mr MA de Klerk to pay off the arrear municipal account for the lease of a portion of Erf 249 and 832 Hermanus in a period equal to the remainder of the temporary renewal of the lease agreement with the Municipality, **be approved**.

RESPONSIBLE OFFICIAL :

**A LE ROUX
E HOONEBERG**

TARGET DATE FOR IMPLEMENTATION :

26 APRIL 2020

TARGET DATE TO INFORM APPLICANT :

N/A

TARGET DATE TO INFORM OBJECTOR :

N/A

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7/2/3/1

A Le Roux

Manager: Property Administration

10 February 2020

(028) 316-3724

**THIS MATTER SERVED BEFORE THE JOINT PORTFOLIO COMMITTEE ON
17 MARCH 2020, WHICH COMMITTEE RECOMMENDED AS FOLLOWS:**

RECOMMENDATION:

that the item **be referred to** the Mayoral Committee meeting of 25 March 2020 for the Administration to clarify certain uncertainties pertaining to the process on how to ensure a smooth and co-ordinated transfer to a new tenderer.

RESPONSIBLE OFFICIAL :

**A LE ROUX
E HOONEBERG**

TARGET DATE FOR IMPLEMENTATION :

26 APRIL 2020

TARGET DATE TO INFORM APPLICANT :

N/A

TARGET DATE TO INFORM OBJECTOR :

N/A

