

**AGENDA of the
Portfolio Committee: Infrastructure & Planning
20 October 2020
(Also the agenda for the Mayoral Committee Meeting: 28 October 2020)**

2.

**A PORTION OF REMAINDER FARM NO 581 (ROAD RESERVE) ONRUSTRIVIER
ADJACENT TO ERF 2877 ONRUSTRIVIER (SITUATED AT 8 BEACH ROAD,
ONRUSTRIVIER): LEASE OF MUNICIPAL PROPERTY TO KARMIEKEM (PTY) LTD**

7/2/3/1

A Le Roux

Manager : Property Administration

10 September 2020

(028) 316 - 3724

1. Executive Summary

To obtain approval to enter into a further lease agreement with Karmiekem (Pty) Ltd, (hereinafter referred to as "the Applicant") for a period of 9 (NINE) years and 11 (ELEVEN) months in respect of municipal property, being a portion of Remainder Farm no 581 (Road Reserve) Onstruvier adjacent to Erf 2877 Onstruvier, ($\pm 24\text{m}^2$ in extent) (hereinafter referred to as "the Property"), situated at 8 Beach Road, Onstruvier, for the purpose of a boundary wall on the Property. 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

On 7 October 2011 an encroachment agreement was entered into between the Overstrand Municipality and the then owner of Erf 2877 Onrustvriër, Chataprop Holdings 46 CC, for a boundary wall on the Property. The encroachment agreement was for a period of 5 (FIVE) years, which commenced on 1 April 2011 and expired on 31 March 2016. Chataprop Holdings 46 CC sold Erf 2877 Onrustvriër to Mr Deon Fabel in February 2013 and a new encroachment agreement was entered into with Mr Deon Fabel for the remainder of the above mentioned encroachment period.

Due to the amendment of the Administration of Immovable Property Policy in 2015, the encroachment onto the Property had to be dealt with as a lease agreement. Mr Deon Fabel applied for a short term lease agreement of 3 (THREE) years. The application was approved and a lease agreement was entered into, which commenced on 1 April 2016 and expired on 31 March 2019. Erf 2877 Onrustvriër was transferred to Karmiekem (Pty) Ltd, a company owned by the family trust (Karmiekem Trust) on 6 March 2018. Mr Deon Fabel applied for renewal of the lease agreement in November 2018. The Applicant applied for a long term lease agreement for 9 (NINE) years and 11 (ELEVEN) months. In principle approval was obtained and a lease agreement was entered into on 16 July 2019 (for administrative and audit purposes) with a special condition included in the agreement stipulating that the lease agreement is subject to the completion of a public participation process, a market related rental to be determined and the Executive Mayor's approval (as delegated authority) allowing the Municipality to enter into the long term agreement. The levy of the rental amount continued according to the lease agreement.

The valuation was done in order to obtain the market related rental and an addendum was compiled and signed on 14 February 2020 to amend the rental amount accordingly. Due to the Covid-19 pandemic the internal processes were delayed and therefore a report for approval can only now serve before the Executive Mayor.

The Property has been used by the Applicant for over 7 (SEVEN) years, and by the previous owner since at least 2011, and no complaints were received during the lease period. The municipal account is up to date.

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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 – 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”.*

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This income value of the proposed lease for the full period will not be in excess of R10,000,000,.00 (TEN MILLION RAND).

Although a market related rental will be levied, the Property itself will not be used for business purposes and is also not classified as a business premises.

The Property can be classified as non-viable property as no other party can make use of it except the owner of an adjoining property, which in this case is the Applicant. The size and locality of the Property makes it impossible for any development or use on the Property by any other party. No complaints have been received regarding the use of the Property.

As a competitive process will in this case not be in the best interest of the community, as the property cannot be used by any other party except the Applicant, it is 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.”***

The Accounting Officer (Municipal Manager) approved in principle the lease of the Property to the Applicant, subject to a public participation process being followed, a market related rental amount being determined and further subject to the approval from the Executive Mayor.

The proposed lease was advertised in The Village News on 19 August 2020 for a 30 (THIRTY) day comment/objection period.

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 market related rental amount was determined by Boland Valuers at R4.16 (FOUR RAND AND SIXTEEN CENTS) (per square metre) per

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month (VAT excluded). An addendum was drafted and signed on 14 February 2020 to amend the rental amount as determined by Boland Valuers. The rental amount will escalate annually on the 1st of July in accordance with the escalation percentage equal to the prevailing consumer price index (all items) in terms of the Municipality's Administration of Immovable Property Policy, as amended from time to time.

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 lease agreement which in this case is only the valuation- and 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.

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 was placed in The Village News on 19 August 2020 for a 30 (THIRTY) day objection/comment period. No objections/comments were 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 2019 at a rental amount of R4.16 (FOUR RAND AND SIXTEEN CENTS) (per square metre) per month (VAT excluded) for the 2019/2020 financial year and R4.34 (FOUR RAND AND THIRTY FOUR CENTS) (per square metre) per month for the 2020/2021 financial year.

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7. Financial Implications

The Municipality stands to gain rental in the amount of R4.16 (FOUR RAND AND SIXTEEN CENTS) (per square metre) per month (VAT excluded) for the 2019/2020 financial year and R4.34 (FOUR RAND AND THIRTY FOUR CENTS) (per square metre) per month for the 2020/2021 financial year, where after the rental amount will escalate every year on the 1st of July in accordance with the percentage equal to the prevailing consumer price index (all items) in terms of the Municipality's Administration of Immovable Property Policy, as amended from time to time, the next escalation to be on 1 July 2021. 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 H Olivier– (028) 313 8900

"Supported, but only for the existing portion of the wall a lease has previously been approved."

Principal Technician: Building Control: Mr G Coetzee – (028) 312 8085

"If it is just for the renewal of the old lease agreement, I will support it."

Senior Manager: Operational Services (Hermanus) Mr T Marx - (028) 313 8092

"Operational Services: Hermanus does not have any objection in the lease of the piece of land. Please take note that we have civil services on the sidewalks and we will have to maintain it from time to time. We will not be liable for any damage from the person who lease the said property/piece of municipal land."

Comment from Property Administration: A clause to this effect is included in the lease agreement

Manager: Engineering Services: Mr R Andrew – (028) 312 8972

"The Engineering Services Department has no objection to the lease renewal."

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Senior Manager: Expenditure and Assets: Mr J Vorster - (028) 313 8046

“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

RECOMMENDATION:

1. that the further lease of municipal property, being a portion of Remainder Farm no 581 Onrustrivier adjacent to Erf 2877 Onrustrivier ($\pm 24\text{m}^2$ in extent) situated at 8 Beach Road, Onrustrivier, to Karmiekem (Pty) Ltd for the purpose of a boundary wall on leased land at the rental amount of R4.16 (FOUR RAND AND SIXTEEN CENTS) (per square metre) per month (VAT excluded) for the 2019/2020 financial year and R4.34 (FOUR RAND AND THIRTY FOUR CENTS) (per square metre) per month for the 2020/2021 financial year for a period of 9 (NINE) years and 11 (ELEVEN) months from 1 April 2020 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 percentage equal to the prevailing consumer price index (all items) in terms of the Municipality's Administration of Immovable Property Policy, as amended from time to time, the next escalation to be on 1 July 2021.

RESPONSIBLE OFFICIAL:

N LIEBENBERG

TARGET DATE FOR IMPLEMENTATION:

18 NOVEMBER 2020

TARGET DATE TO INFORM APPLICANT:

9 NOVEMBER 2020

TARGET DATE TO INFORM OBJECTOR:

N/A

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7/2/3/1

A Le Roux

Manager : Property Administration

10 September 2020

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**THIS MATTER SERVED BEFORE THE JOINT PORTFOLIO COMMITTEE ON
20 OCTOBER 2020, WHICH COMMITTEE SUPPORTED THE RECOMMENDATION**

RESPONSIBLE OFFICIAL:

N LIEBENBERG

TARGET DATE FOR IMPLEMENTATION:

18 NOVEMBER 2020

TARGET DATE TO INFORM APPLICANT:

9 NOVEMBER 2020

TARGET DATE TO INFORM OBJECTOR:

N/A

ANNEXURE A

