

**AGENDA of the
Portfolio Committee : Infrastructure & Planning
19 April 2016
(Also the agenda for the Mayoral Committee Meeting : 28 April 2016)**

**9.
HERMANUS, A PORTION OF ERF 4771, KNOWN AS “DUTCHIES RESTAURANT”:
DEVIATION FROM PARAGRAPHS 18 AND 24 OF THE ADMINISTRATION OF
IMMOVABLE PROPERTY POLICY OF 2015 ALLOWING THE MUNICIPALITY TO
ENTER INTO A FURTHER TEMPORARY LEASE AGREEMENT WITH
SUPERFECTA TRADING 608 CC**

7/2/3/1

M Müller

(028) 316-3724

Hermanus Administration

24 March 2016

1. Executive Summary

To obtain approval for the deviation from paragraphs 18 and 24 of the Administration of Immovable Property Policy of 2015 allowing the Municipality to enter into a further temporary lease agreement with Superfecta Trading 608 CC in respect of a portion of Erf 4771 Hermanus for the purpose of managing a kiosk/restaurant at Grotto Beach, Hermanus.

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
Promotion of tourism, economic and social development

4. Delegated Authority

None

5. Legal Requirements

The Administration of Immovable Property Policy of the Overstrand Municipality of 2015.

6. Background/Discussion/Evaluation/Conclusion

Background

A lease agreement was entered into with Superfecta Trading 608 CC for a two year period from 1 October 2013 to 30 September 2015 after the tender was awarded to the Close Corporation on 16 September 2013. The lease agreement afforded the Overstrand Municipality, at its sole discretion, to

**AGENDA of the
Portfolio Committee : Infrastructure & Planning
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consider the renewal of the lease agreement for a further period of one year provided that the lessee gives the necessary notice in writing to the Municipality of their desire to renew the lease three months prior to the expiration of the lease agreement.

The necessary notice was given and the Municipal Manager gave consent on 13 October 2015 to renew the lease agreement for a further period of 1(ONE) year. Subsequently a further lease agreement was entered into with the lessee for the period 1 October 2015 to 30 September 2016.

The reason for the above-mentioned discretion was in light of the envisaged development of the area, which development will be done after a tender process is followed for the lease and development of the area. It was confirmed by the relevant user department (Town Planning) that the tender for the envisaged development will not be finalised at the time when the current lease agreement expires on 30 September 2016. The user department confirmed that they are awaiting the outcome of the appeal period, from Province, where-after the necessary procedures still need to be followed by the Municipality. Hence the delay in the tender of the development of the area in its whole is not in the Municipality's control. As it is clear that the tender for the lease and development of the Grotto beach area will not be ready when the current lease agreement expires due to circumstances beyond our control, it was proposed to renew the current lease agreement with another 2 (TWO) year period.

Discussion/Evaluation

The following paragraphs of the Administration of Immovable Property Policy have reference:

Par 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.”

Par 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;

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Portfolio Committee : Infrastructure & Planning
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- 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 shall not be followed 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 2 (TWO) years.

Cognisance should also be had to the fact that should the property be vacant for the period from expiry of the current lease agreement the reality would be that the property would likely be vandalised resulting in damages, insurance claims to be made and in all likelihood impacting on the envisage development of the area's timeframe.

Furthermore, the property is an important attraction, not only for tourist visiting the area but also the community of Overstrand Municipality. Should the lease agreement not be renewed it would entail that the restaurant is closed during the peak season, consequently having economically a negative impact and could be construed as the Overstrand Municipality not using its available resources effectively, efficiently and/or economically as the interest of the community will not be served at best.

Par 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 R4,209.85 (FOUR THOUSAND TWO HUNDRED AND NINE RAND AND EIGHTY FIVE CENTS) (VAT excluded) per month and will escalate on 1 July 2016 with a percentage equal to the prevailing consumer price index (all items). This current lease amount is the escalated amount of the tendered amount, as was offered by Superfecta Trading 608 CC when the tender was initially awarded. This amount is the market related amount at the time the tender was awarded (16 September 2013).

**AGENDA of the
Portfolio Committee : Infrastructure & Planning
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A deviation of this paragraph is proposed seeing that the services of a valuer, to determine the rental amount, being the fair market value; will not only be costly but also unnecessary if cognisance is to be had to the fact that the lease amount (as escalated) equals the fair market value of the lease amount, as escalated since the awarding of the tender.

Conclusion

It is recommended that the deviation from paragraphs 18 and 24 of the Administration of Immovable Property Policy of 2015 be approved and subsequently that the lease of a portion of Erf 4771 Hermanus also known as "Dutchies Restaurant" to Superfecta Trading 608 CC for the management of a kiosk/restaurant at Grotto Beach, Hermanus be approved at the escalated lease amount (which is the current lease amount plus the escalation on 1 July 2016) for a further 2 (TWO) year period as from 1 October 2016.

7. Financial Implications

The Municipality currently receives a lease income of R4,209.85 (FOUR THOUSAND TWO HUNDRED AND NINE RAND AND EIGHTY FIVE CENTS) (VAT excluded) until 30 June 2016, where-after the lease amount will escalate on 1 July 2016 with a percentage equal to the prevailing consumer price index (all items). Furthermore, the Municipality stands to gain a lease amount equal to this escalated amount as at 1 July 2016, which will then again escalate on 1 July 2017 and 1 July 2018 with the prevailing consumer price index (all items).

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

None

10. Annexures

Annexure A: Locality Map

RECOMMENDATION TO THE COUNCIL:

1. that the deviation from paragraph 18 of the Administration of Immovable Property Policy of 2015 in order to renew the current lease agreement with Superfecta Trading 608 CC for a further period of 2 (TWO) years without following a competitive process, **be approved;**

**AGENDA of the
Portfolio Committee : Infrastructure & Planning
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(Also the agenda for the Mayoral Committee Meeting : 28 April 2016)**

2. that the deviation from paragraph 24 of the Administration of Immovable Property Policy of 2015 in order to lease the property at the current lease amount (to escalate on 1 July 2016 in terms of the current lease agreement and thereafter on 1 July 2017 and 1 July 2018) being paid and not having to determine the fair market value by appointing a professional valuer; **be approved;**
3. that the renewal of the lease of Municipal Property, being a portion of Erf 4771 Hermanus to Superfecta Trading 608 CC for the management of a kiosk/restaurant at Grotto Beach, Hermanus at a monthly rental amount of R4,209.85 (FOUR THOUSAND TWO HUNDRED AND NINE RAND AND EIGHTY FIVE CENTS) (VAT excluded) until 30 June 2016, where-after the lease amount will escalate on 1 July 2016 with a percentage equal to the prevailing consumer price index (all items) for a period of 2 (TWO) years as from 1 October 2016 in terms of the Administration of Immovable Property Policy of the Overstrand Municipality, **be approved;** and
4. that the lease amount mentioned in 3 above escalate on 1 July 2017 and 1 July 2018, by a percentage fixed in accordance with the prevailing consumer price index (all items) in accordance with paragraph 40 of the Administration of Immovable Property Policy of 2015.

RESPONSIBLE OFFICIAL :	M MÜLLER
TARGET DATE FOR IMPLEMENTATION :	20 JUNE 2016
TARGET DATE TO INFORM APPLICANT :	11 MAY 2016
TARGET DATE TO INFORM OBJECTOR :	N/A

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Hermanus Administration

24 March 2016

**THIS MATTER SERVED BEFORE THE JOINT PORTFOLIO COMMITTEE ON
19 APRIL 2016, WHICH COMMITTEE RECOMMENDED AS FOLLOWS:**

RECOMMENDATION TO THE COUNCIL:

1. that the deviation from paragraph 18 of the Administration of Immovable Property Policy of 2015 in order to renew the current lease agreement with Superfecta Trading 608 CC for a further period of 2 (TWO) years without following a competitive process, **be approved;**
2. that the deviation from paragraph 24 of the Administration of Immovable Property Policy of 2015 in order to lease the property at the current lease amount (to escalate on 1 July 2016 in terms of the current lease agreement and thereafter on 1 July 2017 and 1 July 2018) being paid and not having to determine the fair market value by appointing a professional valuer; **be approved;**
3. that the renewal of the lease of Municipal Property, being a portion of Erf 4771 Hermanus to Superfecta Trading 608 CC for the management of a kiosk/restaurant at Grotto Beach, Hermanus at a monthly rental amount of R4,209.85 (FOUR THOUSAND TWO HUNDRED AND NINE RAND AND EIGHTY FIVE CENTS) (VAT excluded) until 30 June 2016, where-after the lease amount will escalate on 1 July 2016 with a percentage equal to the prevailing consumer price index (all items) for a period of 2 (TWO) years as from 1 October 2016 in terms of the Administration of Immovable Property Policy of the Overstrand Municipality, **be approved;** and
4. that the lease amount mentioned in 3 above escalate on 1 July 2017 and 1 July 2018, by a percentage fixed in accordance with the prevailing consumer price index (all items) in accordance with paragraph 40 of the Administration of Immovable Property Policy of 2015.

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