

**AGENDA of the  
Portfolio Committee : Infrastructure & Planning  
18 February 2020  
(Also the agenda for the Mayoral Committee Meeting : 26 February 2020)**

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**8.  
PORTIONS OF ERVEN 249, 832 & 829 HERMANUS: RENEWAL LEASE OF  
MUNICIPAL PROPERTY TO KEE PROPERTY INVESTMENTS (PTY) LTD**

7/2/3/1

A le Roux

Manager : Property Administration

3 December 2019

(028) 316 3724

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**1. Executive Summary**

To obtain approval to enter into a further lease agreement with KEE Property Investments (Pty) Ltd, in respect of municipal property being portions of Erven 249, 832 & 829 Hermanus (jointly ±702.34m<sup>2</sup> in extent) situated in Marine Drive and Market Square Street for a period of 5 (FIVE) years for placing tables and chairs (and/or benches) for outdoor seating for restaurant purposes.

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

Infrastructure and Planning;  
Property Administration

**3. Compliance with Strategic Priority**

Provision of democratic, accountable and ethical governance

**4. Delegated Authority**

Executive Mayor

**5. Legal Requirements**

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

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

**Background**

Top Presteeders Pty Ltd and thereafter Leaf Property Fund Trust have been using the portions of municipal property being portions of Erven 249, 832 & 829 Hermanus in Marine Drive and Market Square Street, since 2007 for placing tables and chairs (and/or benches) for outdoor seating for restaurant purposes.

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Leaf Property Fund Trust sold their property to KEE Property Investments (Pty) Ltd in 2017. Leaf Property Fund Trust had a lease agreement with the Overstrand Municipality and the lease agreement was ceded to KEE Property Investments (Pty) Ltd for the remainder of the lease period.

The locality and layout of the proposed lease areas are indicated on a locality plan attached per “Annexure A.”

### **Discussion**

KEE Property Investments (Pty) Ltd applied for the renewal of the lease agreement for a further period of 5 (FIVE) years.

The last agreement was for a period of 3 (THREE) years which expired on 30 September 2019. The renewal process had been delayed as the Property Administration Department struggled to have the cessions undersigned by all the relevant parties.

Complaints have been received in the past regarding the space available for wheelchair access. The agreement however makes provision for adequate space allowing free movement of pedestrians and wheelchairs in the area which adequately addresses the concerns. The municipal account of KEE Property Investments (Pty) Ltd is paid up to date.

### **Evaluation**

#### **A. Administration of Immoveable Property Policy of the Overstrand Municipality**

The following conditions of said policy 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.”**

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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”.**

As the property is adjoining the property of the applicant and it is a small area which will not separately be of any practical use to anyone else, who do not own adjoining property, for restaurant seating purposes, it is therefore 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 portions of Erven 249, 832 & 829 Hermanus to KEE Property

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Investments (Pty) Ltd on condition that the public participation process is followed and further subject to the approval from the Executive Mayor.

The proposed lease was advertised in The Village News on 20 November 2019 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”.***

There is an approved tariff for the lease of Municipal Property for outdoor seating for restaurant purposes which will be applicable. The tariff for 2019/2020 financial year is R29.57/m<sup>2</sup> (TWENTY NINE RAND AND FIFTY SEVEN CENT PER SQUARE METRE) (VAT Excluded) per month.

**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.”***

KEE Property Investments (Pty) Ltd will pay all costs relating to the advertisement. No survey of valuation was done and therefore no costs were incurred in this regard.

**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.**

**B. Advertisement/Notification**

An advertisement for the lease of portions of Erven 829 & 832 Hermanus was placed in The Village News on 20 November 2019 for a 30 (THIRTY) day objection/comment period.

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**Conclusion**

With reference to the above discussion, it is recommended that the lease agreement with KEE Property Investments (Pty) Ltd be approved for a further period of 5 (FIVE) years from 1 October 2019 at a rental amount of R29.57 /m<sup>2</sup> (TWENTY NINE RAND AND FIFTY SEVEN CENT PER SQUARE METRE) (VAT Excluded) per month.

**7. Financial Implications**

The Municipality stands to gain rental in the amount of R29.57/m<sup>2</sup> (TWENTY NINE RAND AND FIFTY SEVEN CENT PER SQUARE METRE) (VAT Excluded) per month, such rental to escalate every year on the 1<sup>st</sup> of July as stipulated in the Overstrand Municipality's Tariffs for the specific financial year.

**8. Staff Implications**

None

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

**Senior Manager: Expenditure & Assets, Hermanus – J Vorster 028 313 8046**

As this is a revenue generating proposal with no intention to dispose of the asset, there is no objection.

**10. Annexures**

Annexure A: Locality Plan

Annexure B: Layout Plan

**RECOMMENDATION:**

1. that the lease of municipal property, being portions of Erven 249, 829 & 832 Hermanus (jointly ±702.34m<sup>2</sup> in extent), to KEE Property Investments (Pty) Ltd for placing tables and chairs (and/or benches) for outdoor seating for restaurant purposes at the rental amount of R29.57/m<sup>2</sup> (TWENTY NINE RAND AND FIFTY SEVEN CENT PER SQUARE METRE) (VAT Excluded) per month for a period of 5 (FIVE) years from 1 October 2019 in terms of the Administration of Immoveable Property Policy of the Overstrand Municipality, **be approved**; and

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2. that the rental amount mentioned in 1 above escalate every year on the 1st of July as stipulated in the Overstrand Municipality's Tariffs for the specific financial year, as approved by Council in the Annual Budget, the next escalation to be on 1 July 2020.

<b>RESPONSIBLE OFFICIAL :</b>	<b>R SKADUWEE</b>
<b>TARGET DATE FOR IMPLEMENTATION :</b>	<b>13 MARCH 2020</b>
<b>TARGET DATE TO INFORM APPLICANT :</b>	<b>31 MARCH 2020</b>
<b>TARGET DATE TO INFORM OBJECTOR :</b>	<b>N/A</b>

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**Manager : Property Administration**

**3 December 2019**

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**THIS MATTER SERVED BEFORE THE JOINT PORTFOLIO COMMITTEE ON  
18 FEBRUARY 2020, WHICH COMMITTEE SUPPORTED THE RECOMMENDATION**

**RESPONSIBLE OFFICIAL :**

**R SKADUWEE**

**TARGET DATE FOR IMPLEMENTATION :**

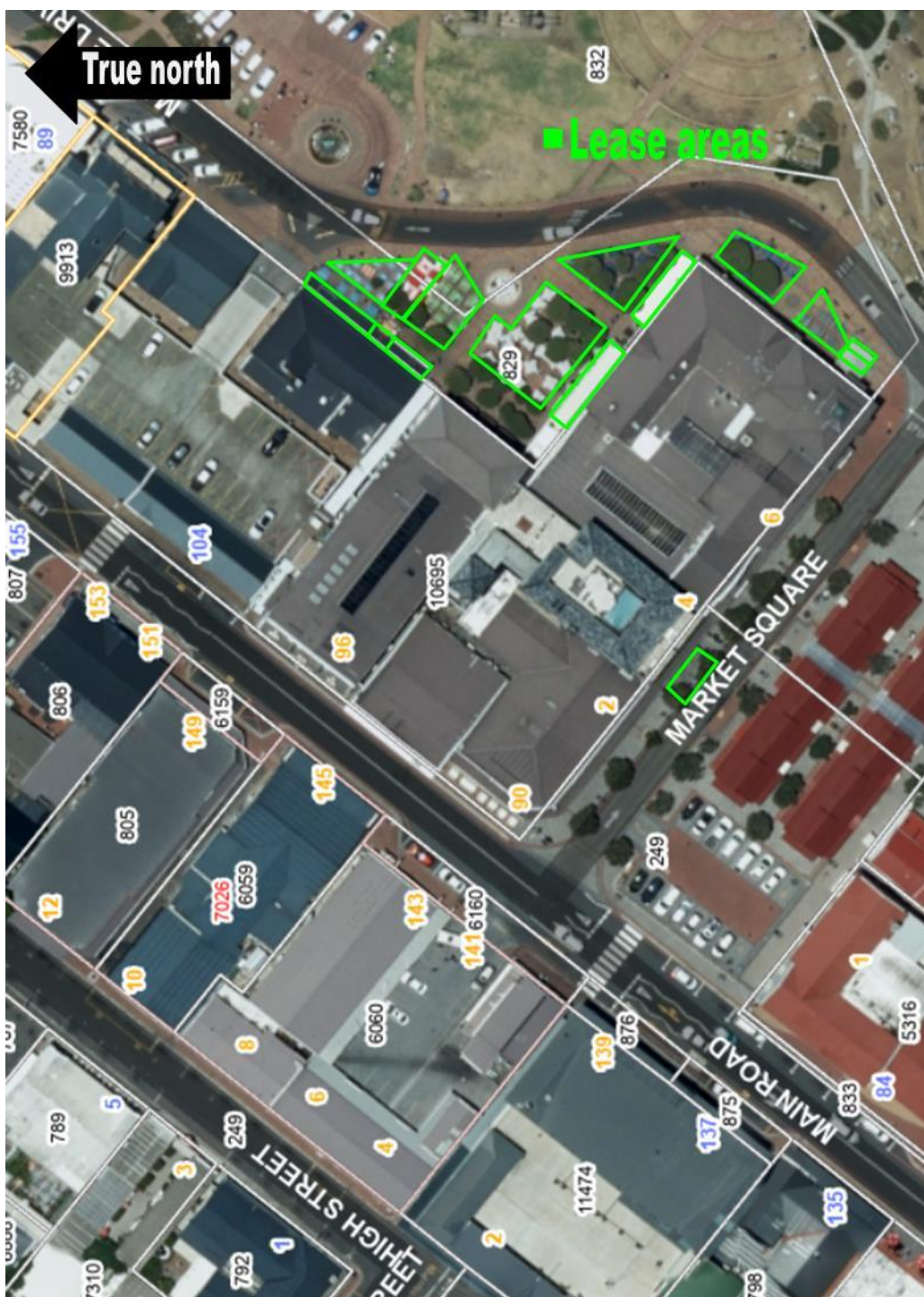
**13 MARCH 2020**

**TARGET DATE TO INFORM APPLICANT :**

**31 MARCH 2020**

**TARGET DATE TO INFORM OBJECTOR :**

**N/A**



ANNEXURE B

