

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

9.

A PORTION OF THE REMAINDER OF ERF 243 HERMANUS: RENEWAL OF LEASE OF MUNICIPAL PROPERTY TO BLUEBIRD TRIO (PTY) LTD T/A NISSAN HERMANUS

7/2/3/1

A le Roux

Manager : Property Administration

3 December 2019

(028) 316 3724

1. Executive Summary

To obtain approval to enter into a further lease agreement with Bluebird Trio (Pty) Ltd t/a Nissan Hermanus, hereafter referred to as “Nissan”, in respect of municipal property, being a portion of the remainder of Erf 243 Hermanus ($\pm 105\text{m}^2$ in extent), situated in Swartdam Road for a period of 3 (THREE) years for the purpose of displaying and parking of vehicles for sale.

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

Nissan has been leasing the said portion of municipal property being a portion of the remainder of Erf 243 Hermanus in Swartdam Road, since 2013 for the purpose of displaying and parking of vehicles for sale.

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

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Discussion

Nissan has been using the said space since 2013 for the parking and displaying of vehicles for sale and have applied for a further lease agreement of 3 (THREE) years.

The Administration of Immovable Property Policy defines a long term lease as a lease for a period longer than 3 (THREE) years. Although Nissan applied for a 3 (THREE) year lease agreement the process for a long term lease needs to be followed as the previous lease period have already exceeded the 3 (THREE) years which is classified as a short term lease. The further lease agreement can thus not be dealt with as a short term lease considering the previous lease periods. In terms of the said policy the Municipality may grant a long term lease if the Accounting Officer has approved the lease in principle, a public participation process is followed and Executive Mayor's (as delegated authority) approval is gained in terms of the above policy.

Nissan's municipal account is paid up to date. The Town Planning Department's comments were requested before the previous agreement was entered into and the area for the parking of the vehicles applies to all requirements which were set out. The agreement makes provision therefore that a 1,5 metre area measured from the tarred surface of the road from Swartdam Road must be free of obstruction at all times to allow for the free movement of pedestrians. The agreement further makes provision therefore that a 5 metre area measured from the tarred surface of the road from Angelier Street must be free of obstruction at all times, this is to ensure that vehicles driving from Angelier Street will have an unobstructed view of the oncoming traffic in Swartdam Road. Nissan has in the past adhered to these requirements.

The last lease agreement, which was for a period of 3 (THREE) years, expired on 30 May 2019 and Nissan applied for the renewal in time and the renewal process was also commenced with by the Property Administration Department in time. Unfortunately due to a holdup on Nissan's side the lease agreement could not be entered into before the expiration of the previous agreement. The Property Administration Department struggled to reach the person responsible for dealing with the application and also waited long periods for outstanding documentation. As Nissan is still in occupation of the property the lease amount is still levied monthly on their municipal account and paid by Nissan. Should the renewal of the lease agreement be approved the renewal date will be backdated to commence the day after expiry of the previous agreement.

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Evaluation

A. Administration of Immoveable Property Policy of the Overstrand Municipality

The following conditions of said policy 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.”

As the site is opposite Nissan and the adjoining property is the Mount Pleasant Sport field the portion of property applied for will not be of any practical use to anyone else. The site is not classified as a business site and no trading is allowed on the property. It is therefore recommended that it be leased directly to Nissan 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 subsequently approved that the right may be granted.”

The Accounting Officer approved in principle the lease of the subject portion of the remainder of Erf 243 Hermanus (±105m² in extent) to Nissan subject thereto that a public participation process be followed and further subject to the approval from the Executive Mayor.

The proposed lease was advertised in the Hermanus News on 20 November 2019 and no objections were received.

Paragraph 24.1: “The fair market value of the alienation of, the rental amount for the leasing or compensation payable for a servitude over municipal immovable property shall be determined

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by an independent professional values professional (Act 2000 (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)."

Agreements for the same purpose have recently been entered into with Autohaven and Hermanus Toyota. It is proposed that the rental per square metre currently being charged for the mentioned lessees also be charged for the rental and use of the municipal property by Nissan.

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."

Nissan will pay the costs relating to the advertisement. No survey or 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 a portion of the remainder of Erf 243 Hermanus ($\pm 105\text{m}^2$ in extent) to Nissan was placed in the Hermanus News on 20 November 2019 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 further lease agreement with Nissan be approved for a further period of 3 (THREE) years from 1 June 2019 at a total rental amount of R575.05 (FIVE HUNDRED AND SEVENTY FIVE RAND AND FIVE CENTS) (Vat excluded) per month. The lease amount will escalate every year on the 1st of July in accordance with the prevailing consumer price index (all items).

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7. Financial Implications

The municipality stands to gain rental in the amount of R575.05 (FIVE HUNDRED AND SEVENTY FIVE RAND AND FIVE CENTS) (Vat excluded) per month for the period of 1 June 2019 to 30 June 2020 where after the lease amount will escalate every year on the 1st of July in accordance with the prevailing consumer price index (all items). All expenses pertaining to the proposed lease will be borne by Nissan.

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

Senior Manager: Expenditure & Assests– J Vorster

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

RECOMMENDATION:

1. that the lease of municipal property, being a portion of the remainder of Erf 243 Hermanus ($\pm 105\text{m}^2$ in extent) to Bluebird Trio (Pty) Ltd t/a Nissan Hermanus for the purpose of displaying and parking of vehicles for sale at the rental amount of R575.05 (FIVE HUNDRED AND SEVENTY FIVE RAND AND FIVE CENTS) (Vat excluded) per month for a period of 3 (THREE) years from 1 June 2019 to 30 May 2022 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 by a percentage fixed in accordance with the prevailing consumer price index (all items) with the first escalation being on 1 July 2020.

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

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A le Roux

3 December 2019

Manager : Property Administration

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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

