

**AGENDA of the
Portfolio Committee : Infrastructure & Planning
5 April 2023
(Also the agenda for the Mayoral Committee Meeting : 24 April 2023)**

4.

A PORTION OF ERF 566 HERMANUS: RENEWAL OF LEASE OF MUNICIPAL PROPERTY TO PARKSEA INVESTMENTS (PTY) LTD SITUATED AT 38 MAIN ROAD, WESTCLIFF, HERMANUS

**R Marinus
3 March 2023**

Acting Manager: Property Administration

(028) 316 5609

1. Executive Summary

To obtain approval to enter into a further lease agreement with Parksea Investments (Pty) Ltd, hereinafter referred to as “the Applicant”, in respect of a portion of Erf 566 Hermanus ($\pm 35\text{m}^2$ in extent), hereinafter referred to as “the Property”, situated at 38 Main Road, Westcliff, Hermanus for a period of 9 (NINE) years and 11 (ELEVEN) months for operating a shop on wooden pillars above municipal parking. The locality map is attached hereto as “Annexure A” as well as a photo marked “Annexure B”.

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/ Discussion

The Applicant is the owner of the adjacent building situated on Erf 6913 Hermanus from where the shop on wooden pillars is being operated. The wooden structure is above 3 municipal parking bays, and the structure is

**AGENDA of the
Portfolio Committee : Infrastructure & Planning
5 April 2023
(Also the agenda for the Mayoral Committee Meeting : 24 April 2023)**

attached to the building which forms part of the general business area on Erf 6913 Hermanus.

On 11 February 2020 the Applicant entered into a lease agreement with the Municipality for a period of 3 (THREE) years from 1 January 2020 until 30 December 2022 for the purpose of operating a shop on wooden pillars above municipal parking.

The Applicant applied for the lease of the Property for a further period of 9 (NINE) years and 11 (ELEVEN) months. Although the application to renew was received timeously, the process could not be finalised before the expiry of the last lease agreement as the Applicant waited for confirmation from its tenant on whether it wanted to renew its lease for a further period. The Applicant is still paying the rental as per the agreement as it is still in occupation of the Property.

No complaints were received from the community regarding the use of the Property by the Applicant during the previous lease period. The municipal account is paid up to date.

A lease agreement has since been drafted (for administrative and audit purposes) with special conditions included in the agreement stipulating that the lease agreement is subject to a public participation process being followed and the Executive Mayor's approval (as delegated authority) allowing the Municipality to enter into the said long term agreement.

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.”

**AGENDA of the
Portfolio Committee : Infrastructure & Planning
5 April 2023
(Also the agenda for the Mayoral Committee Meeting : 24 April 2023)**

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”.**

The proposed lease period is for 9 (NINE) years and 11 (ELEVEN) months.

The lease area is adjacent to the Applicant’s property and the shop forms part of the Applicant’s general business area on Erf 6913 Hermanus. The lease area will not be of any practical use to any other person, due to the walkway and entrance to the shop being part of the adjacent private property. No complaints have been received over the years from the general public and therefore 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.”**

**AGENDA of the
Portfolio Committee : Infrastructure & Planning
5 April 2023
(Also the agenda for the Mayoral Committee Meeting : 24 April 2023)**

The Applicant applied for the renewal of the lease agreement which was approved in principle by the Municipal Manager on 24 November 2022 for a period of 9 (NINE) years and 11 (ELEVEN) months, subject to a public participation process being followed and further subject to the approval by the Executive Mayor as delegated authority for the long-term lease.

The Executive Mayor's approval is hereby sought, and the proposed lease was advertised in The Hermanus Times on 8 February 2023 for a 30 (THIRTY) day comment/objection period. No objections have been received.

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).”

A valuation was done in 2019 by Boland Valuers BK to determine the marked related rental per month. The monthly rental was determined at an amount of R20/m² (TWENTY RAND PER SQUARE METRES) (VAT excluded), which calculated to an amount of R700.00 (SEVEN HUNDRED RAND) (VAT excluded) per month.

The current rental is an amount of R802.42 (EIGHT HUNDRED AND TWO RAND AND FORTY TWO CENTS) (VAT excluded) per month which is the escalated rental of the valuation amount which escalated annually by a percentage equal to the prevailing consumer price index (all items).

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 renewal of the lease agreement which in this case so far is only the 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.”

**AGENDA of the
Portfolio Committee : Infrastructure & Planning
5 April 2023
(Also the agenda for the Mayoral Committee Meeting : 24 April 2023)**

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 the Property was published in The Hermanus Times on 8 February 2023 for a 30 (THIRTY) day objection/comment period. No objection/comment was 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 January 2023 at a rental amount of R802.42 (EIGHT HUNDRED AND TWO RAND AND FORTY TWO CENTS) (VAT excluded) per month for the 2022/2023 financial year.

7. Financial Implications

The Municipality stands to gain rental in the amount of R802.42 (EIGHT HUNDRED AND TWO RAND AND FORTY TWO CENTS) (VAT excluded) per month from 1 January 2023 where after the rental amount will escalate annually on 1 July by a percentage equal to the prevailing consumer price index (all items), the next escalation to be on 1 July 2023. 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 Helgaardt Boshoff– (028) 313 8900

“From a town planning perspective there is no objection against the renewal of the encroachment agreement provided that the parking bay may not be occupied and be accessible to the public for parking purposes.”

Comments from Property Administration: A condition to this effect will be included in the lease agreement.

**AGENDA of the
Portfolio Committee : Infrastructure & Planning
5 April 2023
(Also the agenda for the Mayoral Committee Meeting : 24 April 2023)**

Manager: Building Control – Mr Louis Coetzee – (028) 313 8901

“Building Control has no objection. Approved Plan No. 93048”

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

“As this is a revenue generation proposal, with no intention of selling the asset, there is no objection against the application.”

10. Annexures

Annexure A1 & A2: Locality Plan
Annexure B: Photo of shop

RECOMMENDATION:

1. that the lease of municipal property, being a portion of Erf 566 Hermanus (±35m² in extent), to Parksea Investments (Pty) Ltd, to operate a shop on wooden pillars above municipal parking at a rental amount of R802.42 (EIGHT HUNDRED AND TWO RAND AND FORTY TWO CENTS) (VAT excluded) per month for a period of 9 (NINE) years and 11 (ELEVEN) months from 1 January 2023 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 annually on 1 July by a percentage equal to the prevailing consumer price index (all items), the next escalation to be on 1 July 2023.

RESPONSIBLE OFFICIAL :	R OCTOBER
TARGET DATE FOR IMPLEMENTATION :	30 MAY 2023
TARGET DATE TO INFORM APPLICANT :	15 MAY 2023
TARGET DATE TO INFORM OBJECTOR :	N/A



ANNEXURE A2



ANNEXURE B

