

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

6.

A PORTION OF REMAINDER ERF 572 HERMANUS (ROAD RESERVE): RENEWAL OF LEASE OF MUNICIPAL PROPERTY TO INGWESEC (PTY) LTD (BURGUNDY RESTAURANT) SITUATED AT THE CORNER OF HARBOUR ROAD AND MARINE DRIVE, 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 Ingwesec (Pty) Ltd, hereinafter referred to as “Ingwesec”, in respect of a portion of Remainder Erf 572 Hermanus ($\pm 60\text{m}^2$ in extent), hereinafter referred to as “the Property”, situated at the corner of Harbour Road and Marine Drive, Westcliff, Hermanus for a period of 9 (NINE) years and 11 (ELEVEN) months for placing of tables and chairs and/or benches for restaurant seating purposes. The locality map is attached hereto as “Annexure A1 & A2” 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/ies

Provision of democratic, accountable and ethical governance
Promotion of tourism, economic and social development

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)

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6. Background/Discussion/Evaluation/Conclusion

Background/ Discussion

Bella Rosa Investment Holdings (Pty) Ltd, previous owner of Erf 9862 Hermanus, adjacent to the lease area, had a lease agreement with the Municipality for the lease of a portion of Remainder Erf 572 Hermanus for the placing of tables and chairs and /or benches for restaurant seating purposes. Bella Rosa sold its property to Ingwesec on 18 March 2018 and a cession of lease agreement was entered into in 2019 between the Municipality, Bella Rosa and Ingwesec.

The last agreement was for a period of 5 (FIVE) years which commenced on 1 February 2018 and expired on 31 January 2023.

Ingwesec applied for the renewal of the lease of the Property for the placing of tables and chairs and/or benches for restaurant seating purposes 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 as Ingwesec had to confirm with the Burgundy Restaurant whether the Property is still being used due to the tables and chairs not being on the Property permanently. Ingwesec is still paying the rental as per the agreement. No complaints were received from the community 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.

During the renewal process it was discovered that approval for the cession of the lease from Bella Rosa to Ingwesec was never obtained and therefore formal approval from the Executive Mayor for the cession of the lease agreement is hereby sought.

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

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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”.**

Although the proposed lease is for a long-term period the rental that will be received will not be in excess of R10 million (TEN MILLION RAND) as the rental charged will be in accordance with the tariffs approved in the Annual Budget for lease of municipal land for outdoor seating adjoining a restaurant for the specific financial year. Currently the rental amount is R2,034.60 (TWO THOUSAND AND THIRTY FOUR RAND AND SIXTY CENTS) (VAT excluded) per month.

As the property applied for is a small area which is adjoining the property of Ingwesec, it will on its own, not be of any practical use to anyone else for the purpose of outdoor restaurant seating, especially as the portion is on a

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corner next to a road, it is therefore recommended that the Property be leased directly to Ingwesec 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.”**

Ingwesec applied for the renewal of the lease agreement which was approved in principle by the Municipal Manager on 20 December 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 of the long-term lease and the cession of the lease agreement that occurred with the owners of Erf 9862 Hermanus.

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 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 tariff for the lease of municipal property for outdoor seating adjoining a restaurant is R33.91/m² (THIRTY-THREE RAND AND NINETY-ONE CENTS PER SQUARE METRE) (VAT excluded) per month for the 2022/2023 financial year. The lease area is ±60m² (APPROXIMATELY SIXTY) square metres in extent and the monthly rental calculates to an amount of R2,034.60 (TWO THOUSAND AND THIRTY FOUR RAND AND SIXTY CENTS) (VAT excluded) per month. The agreement will stipulate that the rental amount will escalate annually in accordance with the tariff as approved in the Annual Budget.

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,

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however, waive its right to claim all or any portion of the costs. Where necessary a deposit to cover the costs may be required.

Ingwesec 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.”

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 Ingwesec be approved for a further period of 9 (NINE) years and 11 (ELEVEN) months from 1 February 2023 at a rental amount of R2,034.60 (TWO THOUSAND AND THIRTY FOUR RAND AND SIXTY CENTS) (VAT excluded) per month for the 2022/2023 financial year.

7. Financial Implications

The Municipality stands to gain rental in the amount of R2,034.60 (TWO THOUSAND AND THIRTY FOUR RAND AND SIXTY CENTS) (VAT excluded) per month from 1 February 2023 where after the rental amount will escalate annually on 1 July in accordance with the tariffs stipulated in the Annual Budget as approved by Council, next escalation to be on 1 July 2023. All expenses pertaining to the proposed lease will be borne by Ingwesec.

8. Staff Implications

None

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9. Comments from other Departments, Divisions and Administrations

Senior Town Planner: Ms H van der Stoep– (028) 313 8900

“There is no objection, but an area for disabled and elderly and pedestrians must be available for easy movement.”

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

Manager: Building Control – Mr. L Coetzee – (028) 313 8091

“Building Control has no objection.”

Traffic Services: Mr. P de Gruchy – (028) 313 8094

“There are no objections towards this application, provided that there is still ample space for pedestrians to utilise the reserved section left. There are a lot of pedestrians utilising this area and vehicular traffic is also high at this intersection.”

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

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 lease area

RECOMMENDATION:

1. that the lease of municipal property, being a portion of Remainder Erf 572 Hermanus (±60m² in extent), to Ingwesec (Pty) Ltd, for placing tables and chairs and/or benches for restaurant seating purposes at a rental amount of R33.91/m² (THIRTY-THREE RAND AND NINETY-ONE CENTS PER SQUARE METRE) (VAT excluded) per month for a period of 9 (NINE) years and 11 (ELEVEN) months from 1 February 2023 in terms of the Administration of Immovable Property Policy of the Overstrand Municipality, **be approved**;

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2. that the cession of the lease agreement dated 5 June 2019 that occurred between Bella Rosa Investment Holdings (Pty) Ltd and Ingwesec (Pty) Ltd be approved; and
3. that the rental amount mentioned in 1 above escalate annually on 1 July in accordance with the tariffs stipulated in the Annual Budget as approved by Council, next escalation to be on 1 July 2023.

RESPONSIBLE OFFICIAL :	R OCTOBER
TARGET DATE FOR IMPLEMENTATION :	31 MARCH 2023
TARGET DATE TO INFORM APPLICANT :	15 MARCH 2023
TARGET DATE TO INFORM OBJECTOR :	N/A





