

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

9.

A PORTION OF PORTION 18 OF FARM NO 644 STANFORD: DEVIATION FROM PARAGRAPH 18 OF THE ADMINISTRATION OF IMMOVABLE PROPERTY POLICY OF 2015 ALLOWING THE MUNICIPALITY TO ENTER INTO A DIRECT LEASE AGREEMENT WITH FOOD FOR THOUGHT COMMUNITY PROJECTS NPC

**R Marinus
6 March 2023**

Acting Manager: Property Administration

(028) 316-5609

1. Executive Summary

To obtain approval from Council for the deviation from paragraph 18 of the Administration of Immovable Property Policy (as approved by Council on 25 November 2015) allowing the Municipality to enter into a direct lease agreement with Food For Thought Community Projects NPC (hereinafter referred to as “the Applicant”) in respect of a portion of Portion 18 of Farm No 644 Stanford, ±25,500m² (APPROXIMATELY TWENTY FIVE THOUSAND FIVE HUNDRED SQUARE METRES) in extent (hereinafter referred to as the “Property”) for a period of 3 (THREE) years for agricultural purposes (vegetable farming only), without following a competitive bidding process. See the locality maps attached as Annexures “A1&2”.

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

Municipal Asset Transfer Regulations (R. 878 of 2008)
Administration of Immovable Property Policy of the Overstrand Municipality, as amended

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6. Background/Discussion/Evaluation/Conclusion

Background/Discussion

The Municipal Manager, as delegated authority for the approval of lease agreements up to 3 years in relation to municipal property, approved an application from the Applicant to lease the Property for a period of 3 (THREE) years for agricultural purposes (vegetable farming only) subject to, *inter alia*, Council's approval for a deviation from the relevant paragraph(s) of the Administration of Immovable Property Policy, as amended from time to time.

The application is purely for vegetable farming for the community and strictly no livestock will be allowed on the Property.

The Property is zoned for agricultural use (Agricultural Zone 1: Agriculture) and allows for the cultivation of land for crops and plants, including plantations. Therefore the Property is well suited for the lease purpose as approved.

The Applicant is a non profit company and started the project to help rejuvenate the local economy and provide a source of healthy food for the community. As a not for profit organisation it is restricted from conducting its operations as a commercial farm to make profits and instead it is focused on helping the community with agricultural activities.

In the light of the above and taking into consideration that during the Covid-19 pandemic food security was a priority nationally, it is recommended that the lease of the Property be made available directly to the Applicant for a short term period of 3 (THREE) years.

The Accounting Officer (Municipal Manager) approved the short-term lease of the Property to the Applicant, subject thereto that the approval of Council is obtained as to the deviation from paragraph 18 of the Administration of Immovable Property Policy, as requested in this report. In the interim, for administrative and audit purposes, a written lease agreement was signed that is subject to Council's approval of a deviation from the competitive bidding requirements to allow the Municipality to enter into the agreement directly without following a competitive process.

It must be noted that the Applicant already commenced with activities on the Property, at its own risk.

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Evaluation

A: Administration of Immovable Property Policy of the Overstrand Municipality:

The following paragraphs of the Administration of Immovable Property Policy are applicable:

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.”

The Applicant has paid the application fee of R600.00 (SIX HUNDRED RAND) (VAT excluded), being the application fee payable by non-profit organisations for the 2021/2022 financial year.

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”.

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The lease is not for a long term and the income derived from it will not exceed 10 (TEN) million Rand. The lease is for a property zoned for agricultural uses and will be used as such. To the user department's knowledge, there have been no applications for agricultural purposes on this specific piece of land, however there is general interest in the Overstrand area for agricultural land.

Whilst agricultural activities and farming is generally a business related operation from which profit is derived, in this case the applicant is a non profit company and cannot use any proceeds from the on-sale of vegetables as profit and furthermore, the project is aimed at revitalising the local economy and providing food security in the community.

Considering that the Applicant is a non profit company, food security being a priority as the country recovers from the effects of Covid 19 and as the lease is for a short term it is the Property Administration Department's view that in this case a direct lease will best serve the interests of the community. Therefore it is recommended that Council approves a deviation from paragraph 18.

- Paragraph 21: “Short term lease of municipal immovable property:**
- 21.1 The Municipality may grant a short term lease of municipal immovable property up to three years without the option of renewal only after the Accounting Officer has approved the lease in principle.**
- 21.2 Immovable property let according to paragraph 21.1 above need not be advertised in terms of paragraph 10.1 and 10.2 and need not be subsequently approved by the Executive Mayor, but shall be subject to the following:**
- (a) the lessee shall be responsible for all costs regarding the connection of services, service fees and any other costs associated with the lease;**
 - (b) the Municipality shall, if it is not prescribed that market related rental must be charged, determine the rental;**
 - (c) the lessee shall undertake in writing to compensate the Municipality for damages caused to the immovable property for whatever reason;**
 - (d) the lessee shall indemnify the Municipality against any claims; and**
 - (e) the Municipality may request proof of financial viability to honour the lease.”**

The Accounting Officer (Municipal Manager) approved the lease of the Property to the Applicant subject thereto that the approval of Council is obtained as to the deviation from paragraph 18 of the Administration of

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Immovable Property Policy as requested in this report. The conditions stipulated in Paragraph 21.2(a) – (e) is included in the lease agreement.

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.”*

A rental amount has been approved by Council in its annual budget as a tariff for the lease of municipal land to, amongst others, non profit organisations and it is recommended that this rental amount be used as the rental amount for this lease because the Applicant is a non-profit company.

Conclusion

Taking the above into consideration, it is recommended that Council approves the deviation from paragraph 18 of the Administration of Immovable Property Policy in order for the Municipality to lease the Property to the Applicant directly for a period of 3 (THREE) years without following a competitive process.

7. Financial Implications

The Municipality stands to gain a rental amount equivalent to the rental amount approved for leases to non-profit organisations, being R167.83 (ONE HUNDRED AND SIXTY SEVEN RAND AND EIGHTY-THREE CENTS) (VAT excluded) per month for the 2022-2023 financial year, escalating annually on the 1st of July to an amount in accordance with the Municipality’s tariffs for the specific financial year.

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

Acting Senior Manager: Expenditure and Assets, Mr C Oppelt - (028) 313 8960

“As this is an income generating proposal, with no intention of selling the asset, there is no objection against the application.”

10. Annexures

Annexures A1 & 2: Locality Maps

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RECOMMENDATION TO THE COUNCIL:

that the deviation from paragraph 18 of the Administration of Immovable Property Policy in order to enter into a direct lease agreement with Food For Thought Community Projects NPC in respect of a portion of Portion 18 of Farm No 644 Stanford, ±25,500m² (APPROXIMATELY TWENTY FIVE THOUSAND FIVE HUNDRED SQUARE METRES) in extent for a period of 3 (THREE) years for agricultural purposes (vegetable farming only), without following a competitive bidding process at a rental amount equivalent to the rental amount approved for leases to non-profit organisations, being R167.83 (ONE HUNDRED AND SIXTY SEVEN RAND AND EIGHTY-THREE CENTS) (VAT excluded) per month for the 2022-2023 financial year, escalating annually on the 1st of July to an amount in accordance with the Municipality's budget for the specific financial year, **be approved.**

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



