

**AGENDA of the
Portfolio Committee : Investment & Infrastructure
6 February 2023
(Also the agenda for the Mayoral Committee Meeting : 14 February 2023)**

9.

A PORTION OF REMAINDER ERF 1253 HERMANUS (OPEN SPACE SITUATED IN EASTCLIFF): DEVIATION FROM PARAGRAPH 18 OF THE ADMINISTRATION OF IMMOVABLE PROPERTY POLICY OF 2015 ALLOWING THE MUNICIPALITY TO ENTER INTO A FURTHER LEASE AGREEMENT WITH VODACOM (PTY) LTD

**A Le Roux
19 December 2022**

Manager: Property Administration

(028) 316-5623

1. Executive Summary

To obtain approval from the Executive Mayor to enter into a further lease agreement for a period of 9 (NINE) years and 11 (ELEVEN) months with Vodacom (Pty) Ltd ("Vodacom") in respect of a portion of Remainder Erf 1253 Hermanus, $\pm 4\text{m}^2$ (APPROXIMATELY FOUR-SQUARE METRES) in extent, situated in Eastcliff, hereinafter referred to as "the Property", for the purpose of a temporary mast for telecommunication purposes; and

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 Vodacom in respect of the Property for a temporary mast for telecommunication purposes, without following a competitive process.

2. Service Delivery and Budget Implementation Plan - IGNITE

Investment and Infrastructure
Property Administration

3. Compliance with Strategic Priorities

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

4. Delegated Authority

Partly delegated to the Executive Mayor

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

During the peak seasons, Hermanus experiences a high influx of tourists, holiday makers and visitors which places tremendous pressure on the reception capacity of existing cell phone towers in Hermanus.

Vodacom applied and subsequently entered into a short-term lease agreement with the Municipality for a period of 2 (TWO) years to address the above problem.

The last lease agreement, which was for a period of 2 (TWO) years, expired on 31 October 2022. Vodacom applied for the renewal timeously and the renewal process was also commenced with by the Property Administration Department timeously. Unfortunately, due to the municipal account being in arrears the application process could not be finalised before the expiration of the previous agreement. The Property Administration Department had to wait for the municipal account to be paid up to date before the renewal process could be continued with. The arrear account was caused by Vodacom paying a lump sum every month and not indicating clearly to which accounts the payment must be allocated to causing some of their accounts to be in arrears and others credit. This problem was addressed and resolved.

Vodacom applied to renew the lease agreement as there is a high increase in the demand for reception and, in this case, the application is only to retain the existing temporary tower currently situated on the Property.

There have been no problems with the installation of the temporary tower, no complaints have been received from the public, it is well maintained and provides an important service to the community.

Evaluation

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

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

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

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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 application is for a long-term the rental will not be in excess of R10 million. The site is not classified as nor zoned a business site. The area itself is only approximately four square metres in extent which does not justify an expensive tender process.

In this case a direct lease is proposed with a deviation from paragraph 18 in that a competitive process not be followed as this is for a temporary structure which will serve the community.

The unit Vodacom used on this site is mounted to a precast concrete base which is already on the Property. The unit can only be removed with a crane operated truck and in terms of a clause in the lease agreement, the mobile unit will only be used for specific months and the electricity will be cut/switched off during the months of February, March and September as this site is primarily to serve the community when there is an influx of users in the busy seasons. The total height of the temporary mast is 6.744 metres which includes the antenna and the same mobile unit that was used previously will be installed again, should the renewal be approved.

Paragraph 20: “Long term lease of municipal immovable property with an income value less than R10 million:

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**

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(c) the Executive Mayor, as delegated authority, has subsequently approved that the right may be granted.

The Municipal Manager approved in principle the long-term lease of the Property to Vodacom for a period of 9 (NINE) years and 11 (ELEVEN) months, subject thereto that the approval of Council is obtained for the deviation from paragraph 18 of the Administration of Immovable Property Policy.

The proposed renewal of the lease agreement was advertised in the Village News on 11 November 2022 for a 30 (THIRTY) day comment/objection period. No comments/objections were 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 a mast, is applicable.

As the agreement will be backdated from 1 November 2022 the lease will commence at a monthly rental amount of R77.39/m² (SEVENTY-SEVEN RAND AND THIRTY-NINE CENTS PER SQUARE METRE) (VAT excluded) per month. The lease area is ±4m² in extent which equals to a total rental of R309.56 (THREE HUNDRED AND NINE RAND AND FIFTY-SIX 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 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 will be included in the lease agreement entered into with Vodacom.

B. Advertisement/Notification

An advertisement for the lease of the Property to Vodacom (Pty) Ltd was published in The Village News on 11 November 2022 for a 30 (THIRTY) day objection/comment period. No objection/comment was received.

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Conclusion

Taking the above into consideration, it is recommended that:

- (a) The Executive Mayor approves the renewal of the lease of the Property to Vodacom for a temporary mast for telecommunication purposes at the rental amount of R77.39/m² (SEVENTY-SEVEN RAND AND THIRTY-NINE CENTS PER SQUARE METRE) (VAT excluded) which amounts to R309.56 (THREE HUNDRED AND NINE RAND AND FIFTY-SIX CENTS) (VAT excluded) per month, for a period of 9 (NINE) years and 11 (ELEVEN) months from 1 November 2022 subject to Council approving a deviation from paragraph 18 of the Administration of Immovable Property Policy, and
- (b) Council approves a deviation from paragraph 18 of the Administration of Immovable Property Policy, in order to enter into a direct lease with Vodacom without following a competitive process.

7. Financial Implications

The Municipality stands to gain a rental amount of R309.56 (THREE HUNDRED AND NINE RAND AND FIFTY-SIX CENTS) (VAT excluded) per month, where after the lease amount will escalate every year on the 1st of July in accordance with the tariffs stipulated in the Annual Budget as approved by Council, the next escalation to be on 1 July 2023. All expenses pertaining to the proposed lease will be borne by Vodacom.

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

Senior Town Planner: Mr. Schalk van der Merwe - (028) 313 8900

“The portion on which the infrastructure will be situated is zoned Open Space Zone 1: Nature Reserve. Please note that transmission apparatus is a consent use under zoning and therefore a land use application is required for the continued use. No land use approval could be found for the structure, therefore should an application be submitted then the applicant will also have to apply for administrative penalty.”

Should the lease be approved, a condition will be inserted in the lease agreement for the consent use application to be approved.

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Senior Manager: Expenditure and Assets: 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

Annexures A1 & 2: Locality Map
Annexure B: Sketch Plan

RECOMMENDATION TO THE EXECUTIVE MAYOR:

1. that the lease of municipal property, being a portion of Remainder Erf 1253 Hermanus ($\pm 4\text{m}^2$ in extent), to Vodacom (Pty) Ltd for a temporary mast for telecommunication purposes at the rental amount of R77.39/m² (SEVENTY-SEVEN RAND AND THIRTY-NINE CENTS PER SQUARE METRE) (VAT excluded) which amounts to R309.56 (THREE HUNDRED AND NINE RAND AND FIFTY-SIX CENTS) (VAT excluded) per month for a period of 9 (NINE) years and 11 (ELEVEN) months from 1 November 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 in accordance with the tariffs stipulated in the Annual Budget as approved by Council, the next escalation to be on 1 July 2023.

RECOMMENDATION TO THE COUNCIL:

that the deviation from paragraph 18 of the Administration of Immovable Property Policy allowing a direct lease to Vodacom (Pty) Ltd, **be approved**.

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

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**A Le Roux
19 December 2022**

Manager: Property Administration

(028) 316-5623

THIS MATTER SERVED BEFORE THE INVESTMENT & INFRASTRUCTURE PORTFOLIO COMMITTEE ON 6 FEBRUARY 2023, WHICH COMMITTEE RECOMMENDED AS FOLLOWS:

RECOMMENDATION TO THE EXECUTIVE MAYOR:

1. that the lease of municipal property, being a portion of Remainder Erf 1253 Hermanus ($\pm 4\text{m}^2$ in extent), to Vodacom (Pty) Ltd for a temporary mast for telecommunication purposes at the rental amount of R77.39/m² (SEVENTY-SEVEN RAND AND THIRTY-NINE CENTS PER SQUARE METRE) (VAT excluded) which amounts to R309.56 (THREE HUNDRED AND NINE RAND AND FIFTY-SIX CENTS) (VAT excluded) per month for a period of 9 (NINE) years and 11 (ELEVEN) months from 1 November 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 in accordance with the tariffs stipulated in the Annual Budget as approved by Council, the next escalation to be on 1 July 2023.

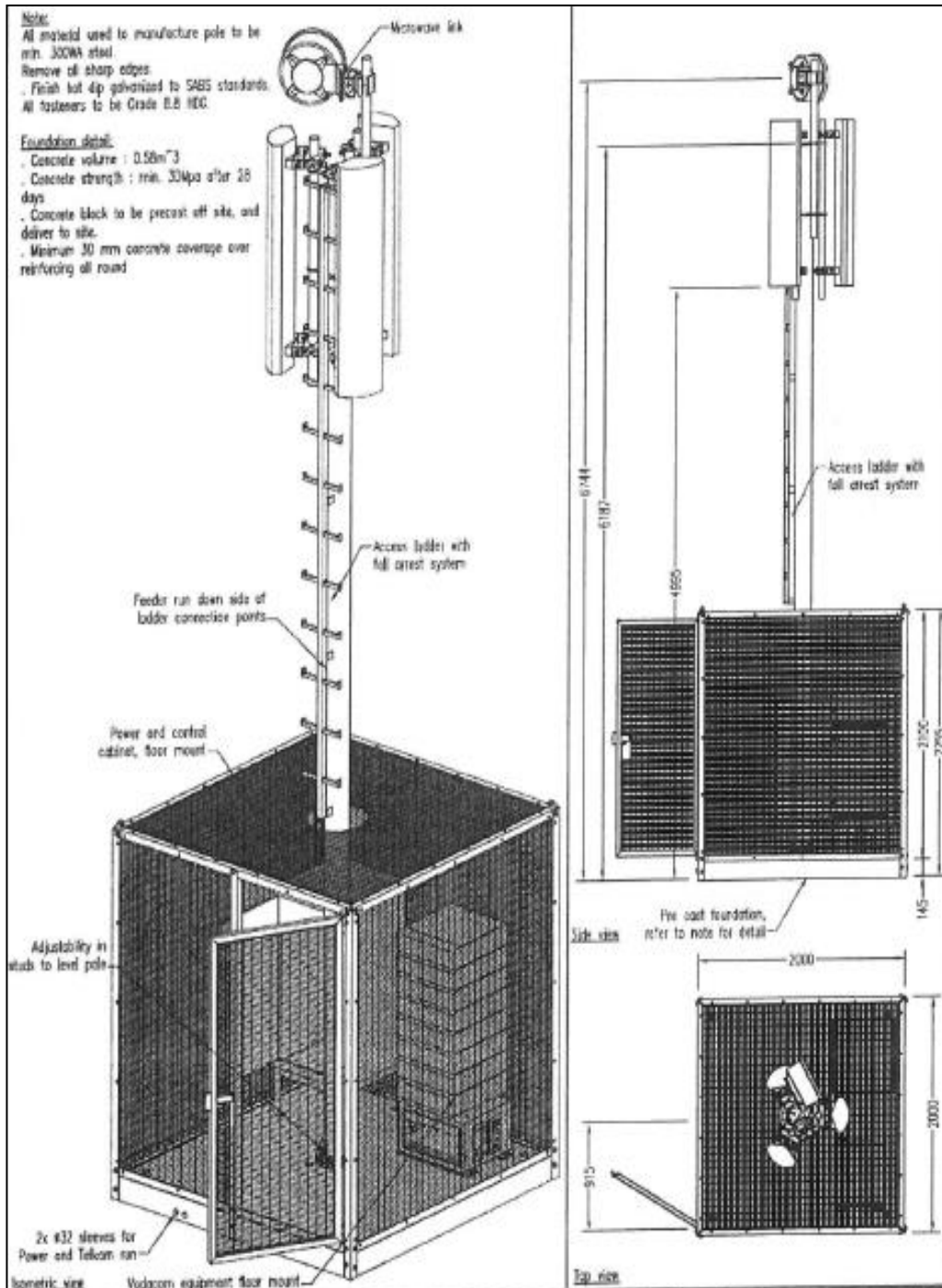
RECOMMENDATION TO THE COUNCIL:

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TARGET DATE FOR IMPLEMENTATION :	15 MARCH 2023
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Graffo Innovative wireless infrastructure solutions

6m pole with precast base for temporary site
 Client : Vodacom (GR137-011-00-00B)

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