

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

15

A PORTION OF REMAINDER ERF 3011 ONRUSTRIVIER, ADJACENT TO ERF 3010 ONRUSTRIVIER (SITUATED IN BEACH ROAD): LEASE OF MUNICIPAL PROPERTY TO HOLTZHAUSEN, JA

**A Le Roux Senior Manager: Property Administration
13 December 2022**

(028) 316 5623

1. Executive Summary

To obtain approval to enter into a further lease agreement with Mr. Johannes Andries Holtzhausen, (hereinafter referred to as “the Applicant”) for a period of 9 (NINE) years and 11 (ELEVEN) months in respect of municipal property, being a portion of Remainder Erf 3011 Onrustrivier adjacent to Erf 3010 Onrustrivier, (±85,5m² in extent) (hereinafter referred to as “the Property”), situated in Beach Road, Onrustrivier, for the purpose of maintaining a water tank and pump in the water reservoir situated on municipal property. See the locality plan attached hereto marked Annexure “A1 & 2”.

2. Service Delivery and Budget Implementation Plan - IGNITE

Investment and Infrastructure
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 previous owner of Erf 3010 Onrustrivier (Onrust Trust) had a lease agreement with the Municipality for a period of 3 (THREE) years from

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1 November 2015 until 31 October 2018 for the above-mentioned purpose. The Onrust Trust sold their property to the Applicant in 2019 and the Applicant submitted an application for the lease of the Property.

On 12 June 2020 a lease agreement was entered into between the Overstrand Municipality and the Applicant, for maintaining a water tank and pump in the water reservoir on the Property. The lease agreement was for a period of 3 (THREE) years, which commenced on 1 December 2019 and expired on 30 November 2022.

The Applicant applied for the renewal of the lease agreement for a further period. On 2 September 2022 the delegated authority approved in principle the application for the renewal of the lease agreement, subject to the completion of a public participation process and the Executive Mayor's approval.

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 the Executive Mayor's approval (as delegated authority) allowing the Municipality to enter into the said long term agreement.

The Property has been used by the Applicant for the past 3 (THREE) years, and no complaints were received during the lease period. The municipal account is up to date.

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."

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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 income value of the proposed lease for the full period will not be in excess of R10,000,000.00 (TEN MILLION RAND).

The Applicant is the owner of the adjoining property, being Erf 3010 Onrustrivier. The water tank was used by the previous owners since 1994, and no other person can utilize the water tank, as it is situated directly adjacent to the Applicant’s property, or has shown interested in using the water tank. No complaints have been received regarding the use of the Property.

As a competitive process will in this case not be in the best interest of the community and as the Property cannot be used by any other party except the Applicant, it is recommended that the Property be leased directly to the Applicant without following a competitive process. The Property is zoned: Transport Zone: 2 Road and Parking and a market related rental will be levied.

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:

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- 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.***

The Accounting Officer (Municipal Manager) approved in principle the lease of the Property to the Applicant on condition that the public participation process is followed, the approval from the Executive Mayor and the submission and approval of building plans.

The proposed lease was advertised in The Village News on 7 October 2022 for a 30 (THIRTY) day comment/objection period. No comments/objections were received.

The Executive Mayor's approval for the long-term lease is hereby sought.

Paragraph 24: *“The fair market value for the alienation of, the rental 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 2015 to determine the market related monthly rental. The valuation was an amount of R4.52/m² (FOUR RAND AND FIFTY-TWO CENTS PER SQUARE METRE) (VAT excluded) per month.

The current rental paid by the Applicant is the escalated amount of the market related rental from 1 July 2022 which is a total amount of R540.49 (IVE HUNDRED AND FORTY RAND AND FORTY-NINE CENTS) (VAT excluded) per month. It is proposed that this escalated market related rent be used for the renewal of the lease. This rental amount will escalate annually on the 1st of July 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.”*

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The Applicant will be liable for the payment of all costs relating to the lease agreement which in this case is only the advertisement cost.

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 to the Applicant was published in The Village News on 7 October 2022 for a 30 (THIRTY) day objection/comment period. No objections/comments were received.

Conclusion

Considering the above discussion, it is recommended that the lease of the Property to the Applicant be approved for a period of 9 (NINE) years and 11 (ELEVEN) months from 1 December 2022 at a rental amount of R540.49 (FIVE HUNDRED AND FORTY RAND AND FORTY-NINE CENTS) (VAT excluded) per month.

7. Financial Implications

The Municipality stands to gain rental in the amount of R540.49 (FIVE HUNDRED AND FORTY RAND AND FORTY-NINE CENTS) (VAT excluded) per month, such rental to escalate every year on the 1st of July in accordance with the consumer price index (all items), the next escalation to be on 1 July 2023.

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

Town Planner: Mr H Olivier

“Town Planning has no objection to the renewal of the lease agreement.”

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Senior Manager: Expenditure & Assets, Hermanus: J Vorster

“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 & 2: Locality Plan

RECOMMENDATION:

1. that the lease of municipal property, being a portion of Remainder Erf 3011 Onrustrivier ($\pm 85,5\text{m}^2$ in extent), to J A Holtzhausen for the purpose of maintaining a water tank and pump in a water reservoir at the rental amount of R540.49 (FIVE HUNDRED AND FORTY RAND AND FORTY NINE CENTS) (VAT excluded) per month for a period of 9 (NINE) years and 11 (ELEVEN) months from 1 December 2022 in terms of the Administration of Immoveable 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 consumer price index (all items), the next escalation to be on 1 July 2023.

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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THIS MATTER SERVED BEFORE THE INVESTMENT & INFRASTRUCTURE PORTFOLIO COMMITTEE ON 6 FEBRUARY 2023, WHICH COMMITTEE SUPPORTED THE RECOMMENDATION

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



