

**AGENDA of the
Portfolio Committee : Investment & Infrastructure
7 June 2023
(Also the agenda for the Mayoral Committee Meeting : 12 June 2023)**

7.

**A PORTION OF REMAINDER ERF 779 FISHERHAVEN (ROAD RESERVE),
ADJACENT TO ERF 151 FISHERHAVEN (51 THE CRESCENT STREET): LEASE
OF MUNICIPAL PROPERTY TO R & BA HAGGARD**

**A Le Roux
16 February 2023**

Manager: Property Administration

(028) 316 5623

1. Executive Summary

To obtain approval to enter into a lease agreement with R & BA Haggard, hereinafter referred to as “the Applicants”, in respect of municipal property being a portion of Remainder Erf 779 Fisherhaven ($\pm 20\text{m}^2$ in extent), located at 51 The Crescent, Fisherhaven, hereinafter referred to as “the Property”, for a period of 9 (NINE) years and 11 (ELEVEN) months. The purpose of the lease is to erect a fence in front of Erf 121 Fisherhaven. The locality map is attached hereto as “Annexure A”.

2. Service Delivery and Budget Implementation Plan - IGNITE

Infrastructure and Planning;
Property Administration

3. Compliance with Strategic Priority

Creation and maintenance of a safe and healthy environment

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 Applicants are the owners of Erf 121 Fisherhaven, adjacent to a portion of Remainder Erf 779 Fisherhaven and applied to lease the Property for a period of 9 (NINE) years and 11 (ELEVEN) months to erect a clear view fence

**AGENDA of the
Portfolio Committee : Investment & Infrastructure
7 June 2023
(Also the agenda for the Mayoral Committee Meeting : 12 June 2023)**

to protect various endangered tree species. The fence will have a height of 1.8m and consist of moss green plastic-coated clear view material.

The Applicants explained that there are various endangered tree species on the Property and that the boundary line of Erf 121 Fisherhaven coincides with the positioned location of these tree species, known as cycad and mature fiddlewood trees. The cycad trees are either E-senticosos or E-ferox according to the papers or permit obtained from Cape Nature. The E-senticosos is a vulnerable tree species, while the E-ferox is a near threatened tree species and for this reason the Applicants applied to lease the Property to be able to safeguard these endangered tree species and thus prevent any harm or disturbance to occur.

Evaluation

A. Administration of Immovable 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.”

The Applicant completed the formal application form and paid the application fee.

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”.

**AGENDA of the
Portfolio Committee : Investment & Infrastructure
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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”.**

As the Property is adjoining the property of the Applicants and it is small area which will not separately be of any practical use to anyone else, who do not own adjoining property, for gardening and conservation purposes, it is therefore recommended that the Property be leased directly to the Applicants without following a competitive process.

Although the lease is for a long term the income value will not be close to R10 million. The Property is not a business site and cannot be used to generate an income. As the Property are adjoining the property of the Applicants, considering the size and the location of the Property it is therefore recommended that the Property be leased directly to the Applicants 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.”**

The Accounting Officer (Municipal Manager) approved in principle the lease of the Property to the Applicants on condition that the public participation process is followed and further subject to the approval from the Executive Mayor for the long-term lease.

The proposed lease was advertised in The Village News on 23 December 2022 for a 30 (THIRTY) day comment/objection period. No objection or comment was received.

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

**AGENDA of the
Portfolio Committee : Investment & Infrastructure
7 June 2023
(Also the agenda for the Mayoral Committee Meeting : 12 June 2023)**

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).”.

HCB Property Valuations on 1 September 2022 determined the market related monthly rental at an amount of R1.25/m² (ONE RAND AND TWENTY-FIVE CENTS PER SQUARE METRE) (VAT Excluded). The valuation was done taking into consideration the size, shape, locality, zoning and proposed use of the Property. As the Property is approximately 20m² in extent the total rent will be approximately R25.00 (TWENTY-FIVE RAND AND ZERO CENTS) (VAT excluded) per month.

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 Applicants will pay all costs relating to the advertisement and valuation. No survey was done and therefore no costs were incurred in this regard.

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 Village News on 23 December 2022 for a 30 (THIRTY) day objection/comment period. No objections/comments were received.

**AGENDA of the
Portfolio Committee : Investment & Infrastructure
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Conclusion

Considering the above discussion, it is recommended that the lease of the Property to the Applicants be approved for a period of 9 (NINE) years and 11 (ELEVEN) months at a rental amount of R1.25/m² (ONE RAND AND TWENTY-FIVE CENTS PER SQUARE METRE) (VAT Excluded) per month.

7. Financial Implications

The Municipality stands to gain rental in the amount of R1.25/m² (ONE RAND AND TWENTY-FIVE CENTS PER SQUARE METRE) (VAT Excluded) per month, such rental to escalate yearly on the 1st of July in accordance with the consumer price index (all items).

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

Environmental Audit Officer, Hermanus – H Fortune

“The Environmental Management Section has no objection to this application.

In August 2020, the municipality gazette Environmental Overlay Zone regulations. The proposed lease property is located within the Coastal Protection Environmental Management Overlay Zone (EMOZ). The purpose of the Environmental Management Overlay Zone is managing the integrity of coastal ecosystems services, coastal dynamic processes, and biodiversity within Coastal Reserves.

General Rural and Estuarine Risk Areas fencing must preferably be permeable to accommodate storm events and limit structural damage and associated negative impacts on the environment. The Applicant must stay within the schedules of the Environmental Management Overlay Zone regulations. It is noted that the Applicants will erect a clear view fence which is permeable to protect the endangered tree species.”

Town Planner, Hermanus – H Olivier

“Town Planning do not have any objection against the lease of the said portion for gardening purposes, subject thereto that the Municipal Environmental Department indicating their support and the importance to retain the vegetation the applicant wants to retain.”

**AGENDA of the
Portfolio Committee : Investment & Infrastructure
7 June 2023
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Senior Manager: Expenditure & Assets, Hermanus – J Vorster

“As this is a revenue generating proposal with no intention to dispose of the asset, there is no objection.”

10. Annexures

Annexure A & B: Locality Plan

RECOMMENDATION:

1. that the lease of municipal property, being a portion of Remainder Erf 779 Fisherhaven ($\pm 20\text{m}^2$ in extent), to R & BA Haggard to erect a clear view fence to protect various endangered tree species at the rental amount of R1.25/m² (ONE RAND AND TWENTY-FIVE CENTS PER SQUARE METRE) (VAT Excluded) per month for a period of 9 (NINE) years and 11 (ELEVEN) months 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 consumer price index (all items), the next escalation to be on 1 July 2023.

RESPONSIBLE OFFICIAL :	V OCTOBER
TARGET DATE FOR IMPLEMENTATION :	28 JULY 2023
TARGET DATE TO INFORM APPLICANT :	14 JULY 2023
TARGET DATE TO INFORM OBJECTOR :	N/A

**AGENDA of the
Portfolio Committee : Investment & Infrastructure
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**THIS MATTER SERVED BEFORE THE INVESTMENT & INFRASTRUCTURE
PORTFOLIO COMMITTEE ON 7 JUNE 2023, WHICH COMMITTEE SUPPORTED THE
RECOMMENDATION**

RESPONSIBLE OFFICIAL :	V OCTOBER
TARGET DATE FOR IMPLEMENTATION :	28 JULY 2023
TARGET DATE TO INFORM APPLICANT :	14 JULY 2023
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ANNEXURE: B

