

**AGENDA of the
Portfolio Committee : Investment & Infrastructure
7 September 2022
(Also the agenda for the Mayoral Committee Meeting : 26 September 2022)**

**5.
A PORTION OF ERF 533 FRANSKRAALSTRAND (SITUATED IN ROUSSOUW
STREET, FRANSKRAAL): 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**

7/2/3/1

A Le Roux

Manager: Property Administration

3 Augustus 2022

(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 Erf 533 Franskraalstrand, ±4m² (APPROXIMATELY FOUR SQUARE METRES) in extent, situated in Rossouw Street, Franskraalstrand, 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

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

Partly delegated to the Executive Mayor

5. Legal Requirements

- Municipal Asset Transfer Regulations (R. 878 of 2008)

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- Administration of Immovable Property Policy of the Overstrand Municipality, as amended

6. Background/Discussion/Evaluation/Conclusion

Background

During the December to April peak season Gansbaai experiences a high influx of tourists, holiday makers and visitors which places a tremendous pressure on the reception capacity of existing cell phone towers in Gansbaai.

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 30 April 2022 and Vodacom applied for the renewal in time and the renewal process was also commenced with by the Property Administration Department in time. Unfortunately, due to the municipal account that was 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. This problem was addressed with them.

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 municipal property.

There have been no problems with the installation of the temporary tower, and 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:

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- 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 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.

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 was a mobile unit on a trailer that could be removed easily and in terms of a clause in the lease agreement, the mobile unit had to be removed for the months of February, March, September and October. The total height of the temporary mast is 6.57 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
(c) the Executive Mayor, as delegated authority, has subsequently approved that the right may be granted.”

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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 Gansbaai Courant on 29 July 2022 for a 30 (THIRTY) day comment/objection period. No formal comments/objections from the public 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 with a mast, is applicable.

As the agreement will be backdated from 1 May 2022 the lease will commence at a monthly rental amount of R73.91/m² (SEVENTY-THREE RAND AND NINETY-ONE CENTS PER SQUARE METRE) (VAT excluded) which amounts to R295.64 (TWO HUNDRED AND NINETY-FIVE RAND AND SIXTY-FOUR CENTS) (VAT excluded) per month, which was the tariff for the 2021/2022 financial year. The rental from 1 July 2022 will be 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.

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B. Advertisement/Notification

An advertisement for the lease of the Property to Nissan was published in The Village News on 29 July 2022 for a 30 (THIRTY) day objection/comment period. A preliminary objection was received from the “Franskraal Belastingbetalers & Inwonersvereniging (Franskraal BB&IV)” which was formally withdrawn on 22 August 2022.

Conclusion

Taking the above into consideration, it is recommended that:

- (a) The Executive Mayor approves the renewal of the lease of municipal property, being a portion of Erf 533 Franskraalstrand ($\pm 4\text{m}^2$ in extent), to Vodacom (Pty) Ltd as from 1 May 2022 for a temporary mast for telecommunication purposes at the rental amount of R73.91/m² (SEVENTY-THREE RAND AND NINETY-ONE CENTS PER SQUARE METRE) (VAT excluded) which amounts to R295.64 (TWO HUNDRED AND NINETY-FIVE RAND AND SIXTY-FOUR CENTS) (VAT excluded) per month, for a period of 9 (NINE) years and 11 (ELEVEN) months subject to Council approving a deviation from paragraph 18 of the Administration of Immovable Property Policy
- (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 (Pty) Ltd without following a competitive process;

7. Financial Implications

The Municipality stands to gain a rental amount of R73.91/m² (SEVENTY-THREE RAND AND NINETY-ONE CENTS PER SQUARE METRE) (VAT excluded) which amounts to R295.64 (TWO HUNDRED AND NINETY-FIVE RAND AND SIXTY-FOUR 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 2022. All expenses pertaining to the proposed lease will be borne by Vodacom.

8. Staff Implications

None

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9. Comments from other Departments, Divisions and Administrations

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

"I did an inspection on 16 March 2022. The transmission apparatus had been removed. As such I am of opinion that my earlier comment pertaining to the applicability of an Administrative Penalty can be waived. As such, no objection to the renewal of the lease, provided that the applicant obtains prior approval in terms of the Overstand Municipality Municipal Land Use Planning Amendment By-law, 2020. Application to address the requirements pertaining to the Transmission Apparatus as required in terms of Section 16. 10.23 of the Overstand Land Use Scheme, 2020. Having had regard to the aforesaid the onus remains on the applicant to demonstrate desirability of the proposed land use with the planning application.

Although not indicated in the memo my comment is based on the fact that the installation would be temporary and similar in height and scale to that previously been on site. It is also suggested that the applicant locates the installation as far as possible away from the adjoining Single Residential property to the south of the substation (i.e. between the substation and the perimeter boundary wall on the southern side)."

The unit Vodacom uses on this site is a mobile unit on a trailer that can be removed easily and in terms of a clause in the lease agreement, the mobile unit must be removed for the months of February, March and September, October. The total height of the temporary mast is 6.57 metres which includes the antenna and the same mobile unit that was used previously will be installed again.

The comment with regards to the installation of the mobile unit will be conveyed to Vodacom.

Senior Manager: Expenditure and Assets, Mr J Vorster - (028) 313 8046

"As this 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

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RECOMMENDATION TO THE EXECUTIVE MAYOR:

1. that the lease of municipal property, being a portion of Erf 533 Franskraalstrand ($\pm 4\text{m}^2$ in extent), to Vodacom (Pty) Ltd for a temporary mast for telecommunication purposes at the rental amount of R73.91/m² (SEVENTY-THREE RAND AND NINETY-ONE CENTS PER SQUARE METRE) (VAT excluded) which amounts to R295.64 (TWO HUNDRED AND NINETY-FIVE RAND AND SIXTY-FOUR CENTS) (VAT excluded) per month for a period of 9 (NINE) years and 11 (ELEVEN) months from 1 May 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 2022.

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 :	26 OCTOBER 2022
TARGET DATE TO INFORM APPLICANT :	15 OCTOBER 2022
TARGET DATE TO INFORM OBJECTOR :	N/A

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7/2/3/1

A Le Roux

Manager: Property Administration

3 Augustus 2022

(028) 316-5623

THIS MATTER SERVED BEFORE THE INVESTMENT & INFRASTRUCTURE PORTFOLIO COMMITTEE ON 7 SEPTEMBER 2022, WHICH COMMITTEE RECOMMENDED AS FOLLOWS:

RECOMMENDATION TO THE EXECUTIVE MAYOR:

1. that the lease of municipal property, being a portion of Erf 533 Franskraalstrand ($\pm 4\text{m}^2$ in extent), to Vodacom (Pty) Ltd for a temporary mast for telecommunication purposes at the rental amount of R73.91/m² (SEVENTY-THREE RAND AND NINETY-ONE CENTS PER SQUARE METRE) (VAT excluded) which amounts to R295.64 (TWO HUNDRED AND NINETY-FIVE RAND AND SIXTY-FOUR CENTS) (VAT excluded) per month for a period of 9 (NINE) years and 11 (ELEVEN) months from 1 May 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 2022.

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.**

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26 OCTOBER 2022

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TARGET DATE TO INFORM OBJECTOR :

N/A



