

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

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**8.  
A PORTION OF REMAINDER ERF 1237 HERMANUS (ROAD RESERVE),  
ADJACENT TO ERF 6215 HERMANUS (214 MAIN ROAD): LEASE OF MUNICIPAL  
PROPERTY TO GIOIA, RE & Y**

7/2/3/1

A Le Roux                      **Manager: Property Administration**

2 August 2022

**(028) 316 5623**

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**1. Executive Summary**

To obtain approval to enter into a further lease agreement with RE & Y Gioia, (hereinafter referred to as “the Applicant”) for a period of 3 (THREE) years in respect of municipal property, being a portion of Remainder Erf 1237 Hermanus (Road Reserve) adjacent to Erf 6215 Hermanus, ( $\pm 144,5\text{m}^2$  in extent) (hereinafter referred to as “the Property”), situated at 214 Main Road, Hermanus, for the purpose of a boundary wall for security purposes. 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**

On 14 November 2008 an encroachment agreement was entered into between the Overstrand Municipality and the Applicant, for a boundary wall on the Property. The encroachment agreement was for a period of 5 (FIVE)

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years, which commenced on 1 November 2008 and expired on 31 October 2013.

In 2010 an investigation was done, and it was discovered that the wall was built illegally without approved building plans. The Applicant was served with a notice to submit a building plan and to obtain approval of the building plan for the boundary wall.

The boundary wall was erected on a portion of the road reserve adjoining the Main Road and therefore the Applicant had to obtain approval from the Department of Transport and Public Works. On 20 April 2010 the Department of Transport and Public Works approved the Applicant's application, subject to the approval of the building plans submitted to the Municipality's Building department. The Applicant applied for the renewal of the encroachment agreement.

Due to the amendment of the Administration of Immovable Property Policy in 2015, the encroachment onto the Property had to be dealt with as a lease agreement. The Applicant applied for a short term lease agreement of 3 (THREE) years. The application was approved, and a lease agreement was entered into, which commenced on 1 May 2019 and expired on 30 April 2022.

The Applicant again applied for the renewal of the lease agreement for a further period. On 24 March 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, the Executive Mayor's approval and the submission and approval of building plans for the boundary wall.

As the building plans have still not been submitted a special condition will be included in the lease agreement stipulating that the lease agreement is subject to the submission of building plans within a specific period.

A valuation was previously done to determine the market related rental which was determined at an amount of R5.23/m<sup>2</sup> (FIVE RAND AND TWENTY THREE CENTS PER SQUARE METRE) (VAT excluded) which calculated to an amount of R755.74 (SEVEN HUNDRED AND FIFTY FIVE RAND AND SEVENTY FOUR CENTS) (VAT excluded) per month. When approval for the renewal is obtained, the rental amount in the renewal agreement will be stipulated as the escalated amount of the market related rental.

The Property has been used by the Applicant for over 14 (FORTEEN) years, and no complaints were received during the lease period. The municipal account is up to date.

Should the renewal of the lease agreement be approved the renewal date will be backdated to commence the day after expiry of the previous agreement.

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**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.”**

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”.**

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

The Property can be classified as non-viable property as no other party can make use of it except the owner of an adjoining property, which in this case is the Applicant. The size and locality of the Property makes it impossible for any development or use on the Property by any other party. 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, 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:**

- 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 29 July 2022 for a 30 (THIRTY) day comment/objection period.

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**

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*the case of a direct sale) or lessee (in the case of a direct lease)/servitude holder (in the case of a servitude). ”.*

Boland Valuers determined the market related monthly rental on 8 February 2019 at an amount of R5.34/m<sup>2</sup> (FIVE RAND AND THIRTY FOUR CENTS PER SQUARE METRE) (VAT excluded) per month.

As the lease will be backdated the agreement will commence at a monthly rental amount of R849.25 (EIGHT HUNDRED FORTY NINE RAND AND TWENTY FIVE CENTS) (VAT excluded) which was the escalated rental at the time of expiration of the lease.

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 R904.45 (NINE HUNDRED AND FOUR RAND AND FORTY FIVE 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 1<sup>st</sup> 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.”**

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

**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 29 July 2022 for a 30 (THIRTY) day objection/comment period. No objections/comments were received.

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### **Conclusion**

Considering the above discussion, it is recommended that the lease of the Property to the Applicant be approved for a period of 3 (THREE) years from 1 May 2022 at a rental amount of R849.25 (EIGHT HUNDRED FORTY NINE RAND AND TWENTY FIVE CENTS) (VAT excluded) per month until the escalation on 1 July 2022 whereafter the rental will be R904.45 (NINE HUNDRED AND FOUR RAND AND FORTY FIVE CENTS) (VAT excluded) per month. .

### **7. Financial Implications**

The Municipality stands to gain rental in the amount of R849.25 (EIGHT HUNDRED FORTY NINE RAND AND TWENTY FIVE CENTS) (VAT excluded) for the period until 30 June 2022. From 1 July 2022 the rental amount will be R904.45 (NINE HUNDRED AND FOUR RAND AND FORTY FIVE CENTS) (VAT excluded) per month, such rental to escalate every year on the 1<sup>st</sup> 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 P Roux– (028) 313 8900**

*“My pervious comment in 2018 was negative towards the proposal, due to the reasons provided below. For me to provide feedback I require to know the following. Was building plans approved for the boundary wall on Erf 1237? And did Department of Transport provide positive feedback?”*

*“The proposed application is not supported due to the following;*

- The wall was built illegally over a portion of the road reserve;*
- A portion of Erf 1237 over which the garden is built is zoned for road use and not for single residential use.*
- The portion of road which the property owner proposes to use for garden purposes is earmarked for the road widening of R43, Main Road.*
- Should the application be considered positively then comment will also have to be acquired from Department of Transport due to the location of the boundary wall.”*

The Town Planner was informed that there are no approved building plans  
The Town planner sent the following updated comment:

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*"I will stand by my previous comments not to support the proposal."*

The District Roads Engineer of the Department of Transport and Public Works had no objection to the boundary wall being erected in 2010, and therefore it is suggested that it is not necessary to obtain an updated comment of the District Roads Engineer, for the boundary wall have been erected more than 14 years ago. A suspensive condition will be included in the lease agreement with regards to the building plans for the boundary wall. If not submitted and approved within a prescribed period, the lease will laps and the applicant will have to demolish the wall.

**Senior Manager: Expenditure & Assets, Hermanus – 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**

Annexure A1 & 2: Locality Plan

### **RECOMMENDATION:**

1. that the lease of municipal property, being a portion of Remainder Erf 1237 Hermanus ( $\pm 144,5\text{m}^2$  in extent), to RE & Y Gioia for the purpose of a boundary wall for security purposes at the rental amount of R849.25 (EIGHT HUNDRED FORTY NINE RAND AND TWENTY FIVE CENTS) (VAT excluded) per month for a period of 3 (THREE) years from 1 May 2022 in terms of the Administration of Immoveable Property Policy of the Overstrand Municipality, **be approved**;
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 2022; and
3. that the approval in 1 above be subject to the suspensive condition that the Applicant submit the building plan for the boundary wall and the subsequent approval thereof within a period of 9 (NINE) months from 1 September 2022.

**RESPONSIBLE OFFICIAL :**

**R OCTOBER**

**TARGET DATE FOR IMPLEMENTATION :**

**15 OCTOBER 2022**

**TARGET DATE TO INFORM APPLICANT :**

**26 OCTOBER 2022**





