

**AGENDA of the  
Portfolio Committee : Infrastructure & Planning  
19 June 2018  
(Also the agenda for the Mayoral Committee Meeting : 27 June 2018)**

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**5.  
HERMANUS, A PORTION OF ERF 4771 KNOWN AS “DUTCHIES RESTAURANT”:  
DEVIATION FROM PARAGRAPHS 18 AND 24 OF THE ADMINISTRATION OF  
IMMOVABLE PROPERTY POLICY OF 2015 ALLOWING THE MUNICIPALITY TO  
ENTER INTO A FUTHER TEMPORARY LEASE AGREEMENT WITH TASOCLOX  
(PTY) LTD**

**7/2/3/1**

**M Erasmus  
9 May 2018**

**(028) 316-3724**

**Hermanus Administration**

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**1. Executive Summary**

To obtain approval from the Executive Mayor to enter into a further lease agreement with Tasoclox (Pty) Ltd in respect of a portion of Erf 4771 Hermanus for the purpose of managing a kiosk/restaurant known as “Dutchies” at Grotto Beach, Hermanus; and

To obtain approval from Council for the deviation from paragraph 18 and 24 of the Administration of Immovable Property Policy of 2015 allowing the Municipality to enter into a further lease agreement with Tasoclox (Pty) Ltd in respect of a portion of Erf 4771 Hermanus for the purpose of managing a kiosk/restaurant at Grotto Beach, Hermanus without following a competitive bidding 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**

- Administration of Immovable Property Policy of the Overstrand Municipality (2015)

**6. Background/Discussion/Evaluation/Conclusion**

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**Background**

A lease agreement was entered into with Superfecta Trading 608 CC for a two year period from 1 October 2013 to 30 September 2015 after the tender was awarded to the Close Corporation on 16 September 2013. The lease agreement afforded the Municipality, at its sole discretion, to consider the renewal of the lease agreement for a further period of one year provided that the lessee gives the necessary notice in writing to the Municipality of their desire to renew the lease three months prior to the expiration of the lease agreement.

The necessary notice was given and the lease agreement was renewed for another year which expired on 30 September 2016.

The renewal was approved in light of the envisaged development of the area, which development will be done after a tender process is followed for the lease and development of the area and certain processes still needed to be completed before the tender could be placed for the development.

After a further application for renewal Council on 28 April 2016 approved as follows:

- “1. *that the deviation from paragraph 18 of the Administration of Immovable Property Policy of 2015 in order to renew the current lease agreement with Superfecta Trading 608 CC for a further period of 2 (TWO) years without following a competitive process, **be approved;***
2. *that the deviation from paragraph 24 of the Administration of Immovable Property Policy of 2015 in order to lease the property at the current lease amount (to escalate on 1 July 2016 in terms of the current lease agreement and thereafter on 1 July 2017 and 1 July 2018) being paid and not having to determine the fair market value by appointing a professional valuer, **be approved;***
3. *that the renewal of the lease of Municipal Property, being a portion of Erf 4771 Hermanus to Superfecta Trading 608 CC for the management of a kiosk/restaurant at Grotto Beach, Hermanus at a monthly rental amount of R4,209.85 (FOUR THOUSAND TWO HUNDRED AND NINE RAND AND EIGHTY FIVE CENTS) (VAT excluded) until 30 June 2016, whereafter the lease amount will escalate on 1 July 2016 with a percentage equal to the prevailing consumer price index (all items) for a period of 2 (TWO) years ans from 1 October 2016 in terms of the Administration of Immovable Property Policy of the Overstrand Municipality, **be approved,** and*
4. *that the lease amount mentioned in 3 above escalate on 1 July 2017 and 1 July 2018, by a percentage fixed in accordance with the prevailing consumer price index (all items) in accordance with paragraph 40 of the Administration of Immovable Property Policy of 2015.”*

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An agreement was subsequently entered into for a 2 year period which will expire on 30 September 2018.

During the period of the last agreement Superfecta Trading 608 CC sold their business to Ms Joke Gonggrijp. Subsequently a cession of the lease agreement was approved and the cession between the Municipality, Superfecta Trading 608 CC and Tasoclox (Pty) Ltd (Gonggrijp) is being finalized whereby the rights, title, interest and obligations under the current lease agreement will be ceded to Tasoclox (Pty) Ltd for the remainder of the current lease period.

The user department for the tender of the envisaged development (Town Planning) confirmed that the tender will not be finalised and awarded by the end of September when the current lease agreement expires. Due to the above it is recommended that the lease agreement with Tasoclox (Pty) Ltd be renewed for a further 2 (TWO) year period as from 1 October 2018.

### **Discussion**

As there are still a few processes to be followed before the tender can be placed for the envisaged Grotto Beach development, it is recommended that a lease agreement for another 2 (TWO) years be entered into with Tasoclox (Pty) Ltd subject thereto that Council approves the requested deviations and the Executive Mayor approves the renewal of the lease agreement and further subject to a public participation process being followed.

### **Evaluation**

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***

***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;***

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- 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.”**

In this case a direct lease is proposed with a deviation from paragraph 18 in that a competitive process not be followed as the adherence to this paragraph of the said Policy will not serve a useful purpose, will be costly and most likely will result in the tender having to be cancelled without awarding it as prospective bidders (lessees) will not be willing to enter into a lease agreement, investing money and time for a lease period of 2 (TWO) years.

Cognisance should also be had to the fact that should the property be vacant for the period from expiry of the current lease agreement the reality would be that the property would most likely be vandalised resulting in damages, insurance claims to be made and in all likelihood impacting on the time line of the envisaged development.

Furthermore, the property is an important attraction, not only for tourists visiting the area but also the community within the Overstrand area. Should the lease agreement not be renewed it will result thereto that the restaurant is closed during the peak season, consequently having economically a negative impact and could be construed as the Overstrand Municipality not using its available resources effectively, efficiently and/or economically as the interest of the community will not be served at best. This in itself might cause further job losses within the Overstrand.

**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 Accounting Officer (Municipal Manager) approved in principle the lease of the subject portion of Erf 4771 Hermanus to Tasoclox (Pty) Ltd subject thereto that the approval of Council is obtained as to the deviation from paragraphs 18 and 24 of the Policy as requested in this report and further subject to a public participation process being followed. An in principle approval for a 2 (TWO) year period was obtained.

In this case, seeing that Superfecta Trading 608 CC / Tasoclox (Pty) Ltd has already had agreements for more than 3 years, a further short term lease in respect of the specific portion of Erf 4771 Hermanus will cause the said total lease period to be in excess of three years, which is not permissible in terms of Paragraph 20 of the Policy if a public participation process is not followed. Should Council approve the deviation of paragraphs 18 and 24 and the Executive Mayor approve the further lease, a public participation process will be followed. Should valid objections be received during the public participation process the matter will be referred back to the Executive Mayor.

Simultaneous with this request for a deviation, a further request will be made for the approval by the Executive Mayor of the long term rental (as the total period will be in excess of three years).

**Paragraph 24: *“The fair market value for the alienation of, the rental amount 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).”***

The current lease amount is R4,707.85 (FOUR THOUSAND SEVEN HUNDRED AND SEVEN RAND AND EIGHTY FIVE CENTS) (VAT excluded) per month which will escalate on 1 July 2018 with a percentage equal to the prevailing consumer price index. This current lease amount is the escalated amount of the tendered amount, as was offered by Superfecta Trading 608 CC when the tender was initially awarded. This amount is the market related amount at the time the tender was awarded.

A deviation from this paragraph is proposed seeing that the services of a valuer, to determine a new market related rental amount, will not only be costly but also unnecessary if cognisance is to be had to the fact that the lease amount (as escalated) equals the fair market value of the lease amount, as escalated since the awarding of the tender.

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It is proposed that the rental amount in the renewal agreement be determined at the rental amount after the said escalation as will be calculated on 1 July 2018.

**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 Tasoclox (Pty) Ltd.

### **Conclusion**

Taking the above into consideration, it is recommended that:

- (a) The Executive Mayor approves the renewal of the lease of a portion of Erf 4771 Hermanus to Tasoclox (Pty) Ltd for a period of 2 (TWO) years from 1 October 2018 for the purpose of managing a kiosk/restaurant at Grotto Beach, Hermanus at the rental amount of R4,707.85 (FOUR THOUSAND SEVEN HUNDRED AND SEVEN RAND AND EIGHTY FIVE CENTS) (VAT excluded) per month plus the escalation to be determined on 1 July 2018, subject to a public participation process being followed; and
- (b) Council approves the deviation from paragraphs 18 and 24 of the Administration of Immovable Property Policy of 2015.

### **7. Financial Implications**

The Municipality stands to gain a rental amount equal to the current rental amount of R4,707.85 (FOUR THOUSAND SEVEN HUNDRED AND SEVEN RAND AND EIGHTY FIVE CENTS) (VAT excluded) per month plus the escalation to be determined on 1 July 2018.

### **8. Staff Implications**

None

### **9. Comments from other Departments, Divisions and Administrations**

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

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As this is an income generating proposal involving the utilisation of a portion of Council Assets while awaiting the conclusion of the proposed tender process pertaining to the development of the Grotto Beach area, there is no objection to the report.

**10. Annexures**

Annexure A: Locality Map

**RECOMMENDATION TO THE EXECUTIVE MAYOR:**

1. that the renewal of the lease of municipal property, being a portion of Erf 4771 Hermanus, to Tasoclox (Pty) Ltd for the purpose of managing a kiosk/restaurant at Grotto Beach, Hermanus for a period of 2 (TWO) years from 1 October 2018 at the monthly rental amount of R4,707.85 (FOUR THOUSAND SEVEN HUNDRED AND SEVEN RAND AND EIGHTY FIVE CENTS) (VAT excluded) per month plus the escalation to be determined on 1 July 2018 in terms of the Administration of Immovable Property Policy of the Overstrand Municipality, **be approved**;
2. that the abovementioned approval subject to:
  - (a) Council approving a deviation from paragraphs 18 and 24 of the Administration of Immovable Property Policy of 2015;
  - (b) a public participation process being followed; and
  - (c) If any objections to the renewal of the lease agreement are received, the matter be referred back to the Executive Mayor for consideration.

**RECOMMENDATION TO THE COUNCIL:**

1. that the deviation from paragraph 18 of the Administration of Immovable Property Policy in order to renew the current lease agreement with Tasoclox (Pty) Ltd for a further period of 2 (TWO) years without following a competitive process, **be approved**, and
2. that the deviation from paragraph 24 of the Administration of Immovable Property Policy in order to renew the current lease agreement with Tasoclox (Pty) Ltd without having a new market related valuation being done, **be approved**.

**RESPONSIBLE OFFICIAL :**

**MADELEIN ERASMUS**

**TARGET DATE FOR IMPLEMENTATION :**

**30 JULY 2018**

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**TARGET DATE TO INFORM APPLICANT : 19 JULY 2018**

**TARGET DATE TO INFORM OBJECTOR : N/A**

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**7/2/3/1**

**M Erasmus  
9 May 2018**

**(028) 316-3724**

**Hermanus Administration**

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**THIS MATTER SERVED BEFORE THE JOINT PORTFOLIO COMMITTEE ON  
19 JUNE 2018, WHICH COMMITTEE RECOMMENDED AS FOLLOWS:**

**RECOMMENDATION:**

1. that the renewal of the lease of municipal property, being a portion of Erf 4771 Hermanus, to Tasoclox (Pty) Ltd for the purpose of managing a kiosk/restaurant at Grotto Beach, Hermanus for a period of 2 (TWO) years from 1 October 2018, **not be approved**; and
2. that a competitive bidding process be followed to lease the property.

<b>RESPONSIBLE OFFICIAL :</b>	<b>M ERASMUS</b>
<b>TARGET DATE FOR IMPLEMENTATION :</b>	<b>30 JULY 2018</b>
<b>TARGET DATE TO INFORM APPLICANT :</b>	<b>19 JULY 2018</b>
<b>TARGET DATE TO INFORM OBJECTOR :</b>	<b>N/A</b>

