

**AGENDA of the
Portfolio Committee : Infrastructure & Planning
22 May 2017
(Also the agenda for the Mayoral Committee Meeting : 31 May 2017)**

**4.
HERMANUS, A PORTION OF ERF 243, A PORTION OF ERF 1253 AND A
PORTION OF ERF 4935: LEASE OF MUNICIPAL PROPERTY TO JOSHGRO
INVESTMENTS 9 (PTY) LTD**

7/2/3/1

**M Erasmus
5 March 2017**

(028) 316-3724

Hermanus Administration

1. Executive Summary

To obtain approval to enter into a further lease agreement with Joshgro Investments 9 (Pty) Ltd, hereafter referred to as "Joshgro", in respect of Municipal Property, being a portion of Erf 243, a portion of Erf 1253 and a portion of Erf 4935 Hermanus (jointly measuring ±160m² in extent) adjacent to Joshgro's property being Erf 11057 Hermanus for a period of 5 (FIVE) years for the purpose of outdoor seating and restaurant purposes.

2. Service Delivery and Budget Implementation Plan - IGNITE

Infrastructure and Planning;
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)

6. Background/Discussion/Evaluation/Conclusion

Background

Joshgro has been leasing a portion of Erf 243, a portion of Erf 1253 and a portion of Erf 4935 adjacent to Erf 11057 Hermanus for a period of 5 (FIVE) years for the purpose of outdoor seating and restaurant purposes since 2012. The said portions of Municipal property are currently being used by Col'cachio Restaurant for outdoor terraces.

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The last agreement was for a period of 2 (TWO) years which expired on 30 September 2016. Although Joshgro applied for renewal of the lease agreement before the expiry date the processes for the long term lease could not be finalised before said date.

The locality and layout of the proposed lease area is indicated on a locality plan attached per "Annexure A".

Discussion

Joshgro applied for a long term lease agreement of a further 5 (FIVE) years.

In terms of the Administration of Immovable Property Policy the Municipality may grant a long term lease if the Accounting Officer has approved the lease in principle, a public participation process is followed and Executive Mayor's (as delegated authority) approval is gained in terms of the above policy.

Joshgro's municipal account is up to date and no complaints regarding the use of the property have been received during their previous period of lease.

As previously confirmed Joshgro applied for the renewal in time and the renewal process was also commenced with by the Property Administration Department in time. Unfortunately due to unforeseen circumstances the lease agreement could not be entered into before the expiration of the previous agreement. As Joshgro is still in occupation of the property the lease amount is still levied monthly on their municipal account and paid by Joshgro. Should the further lease be approved the commencement date will be backdated to commence the day after expiry of the said previous agreement.

Evaluation

A. Administration of Immovable Property Policy of the Overstrand Municipality

The following conditions of said policy apply:

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".

As the site is a small portion adjacent to Joshgro's property and it would

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not make any sense for anyone else to lease it, it can be leased directly to Joshgro without following a competitive process.

Paragraph 20.1: “The Municipality may grant a long term lease of municipal immovable property with a value 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 municipal council has approved that the right may be granted.”**

The Accounting Officer has approved in principle the lease of the subject portion of Erf 243, portion of Erf 1253 and the portion of Erf 4935 Hermanus to Joshgro subject thereto that a public participation process be followed. The proposed lease was advertised in the Hermanus News on 17 January 2017 and no objections 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”.

In this regard the rental charged will be in accordance with the tariff approved in the annual budget.

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.”

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

Paragraph 40: “Rental, except where it is decided otherwise by the Municipality shall escalate annually by a percentage fixed in accordance with the prevailing consumer price index (all items).”

The lease amount (tariff) for the lease of space for the placement of tables and chairs for restaurant purposes are annually determined and approved in the Annual Budget which are approved by Council.

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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 with the Applicant.

B. Advertisement/Notification

An advertisement for the lease of a portion of Erf 243, a portion of Erf 1253 and a portion of Erf 4935 Hermanus to Joshgro was placed in the Hermanus News on 17 January 2017 for a 30 (THIRTY) day objection/comment period. No objections/comments were received.

Conclusion

With reference to the above discussion it is recommended that the lease agreement with Joshgro be approved for a further period of 5 (FIVE) years from 1 October 2016 at a total rental amount of R4 211.40 (FOUR THOUSAND TWO HUNDRED AND ELEVEN RAND AND FORTY CENTS) (VAT excluded) per month. 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 first escalation to be on 1 July 2017.

7. Financial Implications

The Municipality stands to gain a rental in the amount of R4 211.40 (FOUR THOUSAND TWO HUNDRED AND ELEVEN RAND AND FORTY CENTS) (VAT excluded) per month for the period of 1 October 2016 to 30 June 2017. Thereafter 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. All expenses pertaining to the proposed lease will be borne by Joshgro.

8. Staff Implications

None

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9. Comments from other Departments, Divisions and Administrations

J Vorster – Senior Manager: Expenditure & Assets

As this is an income generating proposal, concluded in terms of the conditions set out in the Administration of Immovable Property Policy of the Municipality and with no intension to dispose of the asset, there is no objection to the report.

10. Annexures

Annexure A: Locality Plan

RECOMMENDATION:

1. that the lease of Municipal Property, being a portion of Erf 243, a portion of Erf 1253 and a portion of Erf 4935 Hermanus (jointly measuring $\pm 160\text{m}^2$ in extent) to Joshgro Investments 9 (Pty) Ltd for the purpose of two dining terraces for outdoor seating and restaurant purposes at the rental amount of R4 211.40 (FOUR THOUSAND TWO HUNDRED AND ELEVEN RAND AND FORTY CENTS) (VAT excluded) per month for a period of 5 (FIVE) years from 1 October 2016 to 30 September 2021 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 annually on the 1st of July in accordance with the tariffs as determined and approved in the Annual Budget with the first escalation on 1 July 2017.

RESPONSIBLE OFFICIAL :	M ERASMUS
TARGET DATE FOR IMPLEMENTATION :	30 JUNE 2017
TARGET DATE TO INFORM APPLICANT :	15 JUNE 2017
TARGET DATE TO INFORM OBJECTOR :	N/A

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**THIS MATTER SERVED BEFORE THE JOINT PORTFOLIO COMMITTEE ON
22 MAY 2017, WHICH COMMITTEE SUPPORTED THE RECOMMENDATION**

RESPONSIBLE OFFICIAL :	M ERASMUS
TARGET DATE FOR IMPLEMENTATION :	30 JUNE 2017
TARGET DATE TO INFORM APPLICANT :	31 MAY 2017
TARGET DATE TO INFORM OBJECTOR :	N/A

