

**AGENDA of the
Portfolio Committee : Infrastructure & Planning
22 May 2018
(Also the agenda for the Mayoral Committee Meeting : 30 May 2018)**

**5.
HERMANUS: PORTIONS OF ERF 249 AND 832 HERMANUS “MARKET SQUARE
STALLS”, EXTENSION OF LEASE AGREEMENT, MACHIEL ADRIAAN DE KLERK**

7/2/3/2

**M Erasmus
6 April 2018**

(028) 316 3724

Hermanus Administration

1. Executive Summary

To obtain approval from the Executive Mayor to extend the lease period with a period of 20 (TWENTY) months calculated from 1 August 2018 until 31 March 2020 (representing the months he did not have full occupation of the stalls) for the lease agreement with Mr M A de Klerk in respect of portions of Erf 249 and 832 Hermanus with a period of 20 months for the purpose of the lease, management, sub-letting, supervising and maintenance of the land for informal trading, and

To obtain approval from Council for the deviation from paragraph 18 of the Administration of Immovable Property Policy of 2015 allowing the Municipality to extend the lease agreement with Mr M A de Klerk in respect of portions of Erf 249 and 832 Hermanus for the purpose of the lease, management, sub-letting, supervising and maintenance of the land for informal trading without following a competitive process, and further

To obtain approval from Council for the deviation from paragraph 20 of the Administration of Immovable Property Policy of 2015 allowing the Municipality to extend the lease agreement with Mr M A de Klerk in respect of portions of Erf 249 and 832 Hermanus for the purpose of the lease, management, sub-letting, supervising and maintenance of the land for informal trading without following a public participation 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

**AGENDA of the
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(Also the agenda for the Mayoral Committee Meeting : 30 May 2018)**

5. Legal Requirements

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

6. Background/Discussion/Evaluation/Conclusion

Background

A tender was advertised for the lease and management of the Market Square Stalls situated on portions of Erf 249 and 832 Hermanus for business purposes. The main purpose was to obtain one tenant who can sublease and manage the individual stalls on behalf of the Municipality and who could then take over the total maintenance of the stalls with the management thereof. This is the first time the Municipality attempted this type of venture with the Market Square Stalls. The tender was duly awarded to Mr M A de Klerk on 17 July 2015 at a rental amount of R70,000.00 (SEVENTY THOUSAND RAND) (VAT excluded) per month. The lease agreement entered into with De Klerk is in accordance with the in principle decision, the tender specifications as well as the Administration of Immovable Property Policy and commenced on 1 August 2015 and will expire on 31 July 2018.

Discussion

The Municipality was not able to give full possession of the Market Square to Mr De Klerk on 1 August 2015 as the previous tenants refused to vacate the stalls. In this regard, Court proceedings were launched to obtain a court order for the eviction of the traders who refused to vacate the stalls, which final order was only granted in March 2017. This meant that Mr De Klerk could only obtain full occupation of the Market Square stalls as from 1 April 2017 when he could start fully marketing the stalls.

Thus Mr De Klerk could only start with the whole venture and process of managing the Market Square Stalls when he was given occupation of all the stalls in Market Square that were included in the tender.

Mr De Klerk made his calculations and compiled his business plan on the basis of leasing and managing all the stalls at the Market Square, he tendered for the management of all the stalls at the Market Square and an agreement for the management of all the stalls was entered into with Mr De Klerk. Due to the illegal occupants the Municipality was however not able to provide Mr De Klerk with the opportunity to manage all the stalls until the end of March 2017.

**AGENDA of the
Portfolio Committee : Infrastructure & Planning
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(Also the agenda for the Mayoral Committee Meeting : 30 May 2018)**

The lease agreement with Mr De Klerk is for a period of 3 (THREE) years of which Mr De Klerk will in effect only be able to manage all the stalls as provided for in the lease agreement for a period of 16 (SIXTEEN) months of the said 36 (THIRTY SIX) month lease period.

Evaluation

The following paragraphs of the Administration of Immovable Property Policy are applicable:

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 a competitive process was followed for the lease of the stalls at Market Square prior to entering into a lease agreement with Mr De Klerk and as this will not be a new agreement nor a renewal agreement but rather an extension for the period for which Mr De Klerk could not fully occupy and manage the Market Square Stalls, it is proposed that the lease agreement be extended without following a competitive process.

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**
 - (b) the Executive Mayor, as delegated authority, has subsequently approved that the right may be granted.”**

**AGENDA of the
Portfolio Committee : Infrastructure & Planning
22 May 2018
(Also the agenda for the Mayoral Committee Meeting : 30 May 2018)**

In this case, seeing that the original lease period of the agreement with Mr De Klerk was for 3 (THREE) years, a further extension in respect of the specific portions of Erf 249 and 832 Hermanus will cause the said total lease period (cognisance should be had here that full occupation could not be given for the total 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. It is in this regard that a deviation from Paragraph 20 is requested as to the public participation process.

Simultaneous with this request for a deviation, a further request will be made for the approval by the Executive Mayor of the extension of the lease agreement (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 commencement rental in 2015 was R70,000.00 (VAT excl) per month which was the amount tendered. The annual escalation percentage is 7% (SEVEN PERCENT) and the current rental amount is R80,143.22 (VAT excl) per month (for the full occupation). Should the agreement be extended as proposed the rental for the extension period will be as follow:

Period	Rental (Excl) / month
1 August 2018 - 30 June 2019	R85 753.25
1 July 2019 - 31 March 2020	R91 755.98

Conclusion

Taking the above into consideration, it is recommended that:

- (a) The Executive Mayor approves the extension of the lease of portions of Erf 249 and 832 Hermanus to Mr De Klerk for a period of 20 (TWENTY) months from 1 August 2018 for the lease, management, sub-letting, supervising and maintenance of the land for informal trading at the rental amount of R85,753.25 (VAT excl) per month with an annual escalation of 7%;
- (b) Council approves the deviation from paragraph 18 of the Administration of Immovable Property Policy of 2015 as to the competitive process, and

**AGENDA of the
Portfolio Committee : Infrastructure & Planning
22 May 2018
(Also the agenda for the Mayoral Committee Meeting : 30 May 2018)**

- (c) Council approves the deviation from paragraph 20 of the Administration of Immovable Property Policy of 2015 as to the public participation process.

7. Financial Implications

The Municipality will receive a monthly rental income as follows:

Period	Rental (Excl) / month
1 August 2018 - 30 June 2019	R 85 753.25
1 July 2019 - 31 March 2020	R 91 755.98

8. Staff Implications

N/A

9. Comments from other Departments, Divisions and Administrations

None

10. Annexures

Annexure A: Locality plan

RECOMMENDATION TO THE EXECUTIVE MAYOR:

1. that the extension of the lease of Municipal Property, being portions of Erf 249 and 832 Hermanus, to Mr M A de Klerk for the lease, management, sub-letting, supervising and maintenance of the land for informal trading for a period of 20 (TWENTY) months from 1 August 2018 at the monthly rental amount of R85,753.25 (EIGHTY FIVE THOUSAND SEVEN HUNDRED AND FIFTY THREE RAND AND TWENTY FIVE CENTS) (VAT excl) per month with an annual escalation of 7% in terms of the Administration of Immovable Property Policy of the Overstrand Municipality, **be approved subject to Council approving a deviation from paragraphs 18 and 20 of the Administration of Immovable Property Policy.**

RECOMMENDATION TO THE COUNCIL:

1. that the deviation from paragraph 18 of the Administration of Immovable Property Policy in order to extend the current lease agreement with Mr M A de Klerk for a further period of 20 (TWENTY) months without following a competitive process, **be approved**, and
2. that the deviation from paragraph 20 of the Administration of Immovable

**AGENDA of the
Portfolio Committee : Infrastructure & Planning
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(Also the agenda for the Mayoral Committee Meeting : 30 May 2018)**

Property Policy in order to extend the current lease agreement with Mr M A de Klerk for a further period of 20 (TWENTY) months without following a public participation process, **be approved.**

RESPONSIBLE OFFICIAL :	M ERASMUS
TARGET DATE FOR IMPLEMENTATION :	8 JUNE 2018
TARGET DATE TO INFORM APPLICANT :	30 JUNE 2018
TARGET DATE TO INFORM OBJECTOR :	N/A

**AGENDA of the
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7/2/3/2

M Erasmus
6 April 2018

(028) 316 3724

Hermanus Administration

THIS MATTER SERVED BEFORE THE JOINT PORTFOLIO COMMITTEE ON 22 MAY 2018, WHICH COMMITTEE RECOMMENDED AS FOLLOWS:

RECOMMENDATION TO THE EXECUTIVE MAYOR:

that the extension of the lease of Municipal Property, being portions of Erf 249 and 832 Hermanus, to Mr M A de Klerk for the lease, management, sub-letting, supervising and maintenance of the land for informal trading for a period of 20 (TWENTY) months from 1 August 2018 at the monthly rental amount of R85,753.25 (EIGHTY FIVE THOUSAND SEVEN HUNDRED AND FIFTY THREE RAND AND TWENTY FIVE CENTS) (VAT excl) per month with an annual escalation of 7% in terms of the Administration of Immovable Property Policy of the Overstrand Municipality, **be approved subject to Council approving a deviation from paragraphs 18 and 20 of the Administration of Immovable Property Policy.**

RECOMMENDATION TO THE COUNCIL:

1. that the deviation from paragraph 18 of the Administration of Immovable Property Policy in order to extend the current lease agreement with Mr M A de Klerk for a further period of 20 (TWENTY) months without following a competitive process, **be approved**, and
2. that the deviation from paragraph 20 of the Administration of Immovable Property Policy in order to extend the current lease agreement with Mr M A de Klerk for a further period of 20 (TWENTY) months without following a public participation process, **be approved.**

RESPONSIBLE OFFICIAL :	M ERASMUS
TARGET DATE FOR IMPLEMENTATION :	8 JUNE 2018
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