

**AGENDA of the  
Portfolio Committee: Infrastructure & Planning  
20 October 2020  
(Also the agenda for the Mayoral Committee Meeting: 28 October 2020)**

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**3.**

**A PORTION OF THE REMAINDER OF FARM NO 581 (ROAD RESERVE) ONRUSTRIVIER ADJACENT TO ERF 2874 ONRUSTRIVIER (SITUATED AT 13 ERICA STREET, ONRUSTRIVIER): LEASE OF MUNICIPAL PROPERTY TO THE EXECUTOR OF ESTATE LATE MR GMS TURNER OR SUCESSORS IN TITLE (HEIRS)**

**7/2/3/1**

**A Le Roux**

**Manager : Property Administration**

**9 September 2020**

**(028) 316 - 3724**

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**1. Executive Summary**

To obtain approval to enter into a lease agreement with the executor of estate late Mr GMS Turner or successors in title (heirs) for a period of 9 (NINE) years and 11 (ELEVEN) months in respect of municipal property, being a portion of Remainder Farm no 581 (Road Reserve) Onsrustrievier adjacent to Erf 2874 Onrustrievier, ( $\pm 42.5\text{m}^2$  in extent) (hereinafter referred to as "the Property"), situated at 13 Erica Street, Onrustrievier, for the purpose of a wooden fence. See the locality plan attached hereto marked Annexure "A".

**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  
Creation and maintenance of a safe and healthy environment  
Promotion of tourism, economic and social development

**4. Delegated Authority**

Executive Mayor

**5. Legal Requirements**

- Municipal Asset Transfer Regulations (R. 878 of 2008)
- Administration of Immovable Property Policy of the Overstrand Municipality (2015)

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

### **Background/Discussion**

Mr GMS Turner, (hereinafter referred to as “the Applicant”) became the owner of Erf 2874 Onrustvriev in 2001. According to the Applicant, at the time of purchase it was not revealed that an encroachment exists on the Property by means of a wooden fence. The Applicant was informed in 2011 by the Property Administration department about the encroachment on the Property. An encroachment agreement was entered into, which commenced on 1 April 2011 and expired on 31 March 2016.

Due to the amendment of the Administration of Immovable Property Policy in 2015, the encroachment of the wooden fence must be dealt with as a lease agreement. The Applicant subsequently applied for a long term lease agreement for 9 (NINE) years and 11 (ELEVEN) months.

The encroachment fee is still being levied annually on the account and, if approved, the lease agreement will commence on 1 July 2020.

The Applicant unfortunately passed away in July 2020. The Applicant’s son is in the process of being appointed as executor of the estate late Mr GMS Turner. The son confirmed that the family wish to continue with the application and the lease agreement will eventually be entered into with estate late Mr GMS Turner or successors in title (heirs). This will ensure that once the estate is finalised and the property transferred to the beneficiaries (successors in title), the lease agreement can be ceded without obtaining approval again. The lease agreement will only be signed once the letters of Executorship has been issued by the Master of the High Court.

The Property has been used by Mr Turner for over 19 (NINETEEN) years and by the previous owner for many years before that without any problems or complaints from the public regarding the use of the Property. The municipal account is up to date.

### **Evaluation**

A: Administration of Immovable Property Policy of the Overstrand Municipality:

The following conditions of the said Policy will 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**

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***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.”***

A formal application form was completed and an application fee was paid.

**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”.**

As the Property will not be of any use to lease by another parties and the fact that the fence has been on the Property for more than 19 (NINETEEN) years without any complaints received and as fact that the Property can be classified as non-viable property, it is recommended that the Property be leased directly to the applicant without following a competitive process.

**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;**

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- 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 (before he passed away), subject to a public participation process being followed and further subject to the approval from the Executive Mayor.

The proposed lease was advertised in The Village News on 19 August 2020 for a 30 (THIRTY) day comment/objection period.

**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.”**

A valuation was done in December 2019 on the neighbouring portion of municipal property, a portion of Remainder Farm no 581 Onrustvriër (road reserve) adjacent to Erf 2877 Onrustvriër, which is currently leased by Karmiekem (Pty) Ltd for the purpose of a boundary fence/wall. . The market related rental was determined at R4.16 (FOUR RAND AND SIXTEEN CENTS) (per square metre) per month (VAT excluded). As the nature of this application is the same as the lease agreement between Overstrand Municipality and Karmiekem (Pty) Ltd, it is recommended that the same rental amount be used for this application with the provision that it be escalated to be in line with what Karmiekem (Pty) Ltd is currently paying. The above rental amount escalated on 1 July 2020 in accordance with the prevailing consumer price index (all items) and the rental is currently an amount of R4.34 (FOUR RAND AND THIRTY FOUR CENTS) (per square metre) per month (VAT excluded).

The rental amount will escalate annually on the 1<sup>st</sup> of July in accordance with the percentage equal to the prevailing consumer price index (all items) in terms of the Municipality’s Administration of Immovable Property Policy, as amended from time to time.

**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.”**

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The Applicant will be liable for the payment of all costs relating to the lease agreement which in this case so far is only the application fee and advertisement costs, which were both paid.

**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 the Property was placed in The Village News on 19 August 2020 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 the Executor of Estate late GMS Turner and / or successors in title be approved for a period of 9 (NINE) years and 11 (ELEVEN) months from 1 July 2020 at a rental amount of R4.34 (FOUR RAND AND THIRTY FOUR CENTS) (per square metre) per month (VAT excluded).

**7. Financial Implications**

The Municipality stands to gain rental in the amount of R4.34 (FOUR RAND AND THIRTY FOUR CENTS) (per square metre) per month (VAT excluded) which equals a total rental of R184.45 (ONE HUNDRED AND EIGHTY FOUR RAND AND FORTY FIVE CENTS) (VAT excluded) per month, where after the rental amount will escalate every year on the 1<sup>st</sup> of July in accordance with the percentage equal to the prevailing consumer price index (all items) in terms of the Municipality’s Administration of Immovable Property Policy, as amended from time to time, the next escalation to be on 1 July 2021. All expenses pertaining to the proposed lease will be borne by the applicant.

**8. Staff Implications**

None

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

**Town Planner: Mr H Olivier– (028) 313 8900**

*“Supported, but only for the existing portion of the wall a lease has previously been approved.”*

**Manager: Engineering Services: Mr R Andrew – (028) 313 8972**

*“No objection.”*

**Principal Technician: Building Control: Mr G Coetzee – (028) 312 8085**

*“No comment.”*

**Senior Manager: Operational Services (Hermanus) Mr T Marx - (028) 313 8092**

*“Operational Services: Hermanus does not have any objection with the lease of the piece of land. Please take note that we have civil services on the sidewalks and we will have to maintain it from time to time. We will not be liable for any damage from the person who leases the said property/piece of municipal land.”*

Comment from Property Administration: A clause to this effect is included in the lease agreement.

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

*“As this is an income generating proposal, with no intention of selling the asset, there is no objection against the application.”*

**10. Annexures**

Annexure A: Locality Map

**RECOMMENDATION:**

1. that the lease of municipal property, being a portion of Remainder Farm no 581 Onrustrivier adjacent to Erf 2874 Onrustrivier ( $\pm 42.5\text{m}^2$  in extent) situated at 13 Erica Street, Onrustrivier, to the executor of Estate late Mr GMS Turner and/or successors in title (heirs) for the purpose of a wooden fence at the rental amount of R4.34 (FOUR RAND AND THIRTY FOUR CENTS) (per square metre) per month (VAT excluded), for a period of 9 (NINE) years and 11 (ELEVEN) months from 1 July 2020 in terms of the Administration of Immovable Property Policy of the Overstrand Municipality, **be approved**,

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2. that once the estate of late Mr GMS Turner is finalized, the lease agreement will be ceded to the successors in title (heirs); and
3. that the rental amount mentioned in 1 above escalate every year on the 1st of July in accordance with the percentage equal to the prevailing consumer price index (all items) in terms of the Municipality's Administration of Immovable Property Policy, as amended from time to time, the next escalation to be on 1 July 2021.

<b>RESPONSIBLE OFFICIAL:</b>	<b>N LIEBENBERG</b>
<b>TARGET DATE FOR IMPLEMENTATION:</b>	<b>18 NOVEMBER 2020</b>
<b>TARGET DATE TO INFORM APPLICANT:</b>	<b>9 NOVEMBER 2020</b>
<b>TARGET DATE TO INFORM OBJECTOR:</b>	<b>N/A</b>

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**7/2/3/1**

**A Le Roux**

**Manager : Property Administration**

**9 September 2020**

**(028) 316 - 3724**

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**THIS MATTER SERVED BEFORE THE JOINT PORTFOLIO COMMITTEE ON 20 OCTOBER 2020, WHICH COMMITTEE SUPPORTED THE RECOMMENDATION**

**RESPONSIBLE OFFICIAL:**

**N LIEBENBERG**

**TARGET DATE FOR IMPLEMENTATION:**

**18 NOVEMBER 2020**

**TARGET DATE TO INFORM APPLICANT:**

**9 NOVEMBER 2020**

**TARGET DATE TO INFORM OBJECTOR:**

**N/A**

ANNEXURE A

