

**AGENDA of the
Portfolio Committee : Infrastructure & Planning
19 October 2021
(Also the agenda for the Mayoral Committee Meeting : 28 October 2021)**

12.

PORTION 5 OF THE FARM NO. 585 SITUATED IN THE HEMEL AND AARDE VALLEY HERMANUS: DEVIATION FROM PARAGRAPH 18 OF THE ADMINISTRATION OF IMMOVABLE PROPERTY POLICY OF 2015 ALLOWING THE MUNICIPALITY TO ENTER INTO A DIRECT LEASE WITH OVERSTRAND SKILLS TRAINING NETWORK NPC

7/2/3/1

R Marinus

Acting Manager: Property Administration

12 August 2021

(028) 316 5609

1. Executive Summary

To obtain approval from the Executive Mayor to enter into a long-term lease agreement with Overstrand Skills Training Network NPC (Section 21 company), hereinafter referred to as “the Applicant”, in respect of portion 5 of Farm No. 585 situated in the Hemel and Aarde Valley Hermanus (698,047m² in extent), hereinafter referred to as “the Property”, for the purposes of an adventure eco lodge and/or others to be developed on the Property (more detail below in the report); 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 enter into a direct lease agreement with the Applicant in respect the Property for the purposes of an adventure eco lodge and/or others to be developed on the Property (more detail below in the report) without following a competitive bidding process. The locality map is attached hereto as “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
Promotion of tourism, economic and social development

4. Delegated Authority

Partly delegated to the Executive Mayor

**AGENDA of the
Portfolio Committee : Infrastructure & Planning
19 October 2021
(Also the agenda for the Mayoral Committee Meeting : 28 October 2021)**

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

The Applicant had a lease agreement for 9 years and 11 months which expired on 30 November 2020, which lease agreement was entered into after a competitive bidding process was followed. They are still in occupation and rental is still being levied. The purpose of the lease agreement stipulates as follows: *“The said land, together with such buildings and other structures as may be erected in accordance with the provisions of this agreement shall be used exclusively for purposes as described in the herein before-mentioned Stage 2 bidding document received from the LESSEE and no other activities will be allowed on the leased land.”*

The proposal as per the tender was as follows: *“The proposal opts for an adventure eco lodge and/or others to be developed on Erf 5/585.”*

The following activities were listed:

- “1. Facilitating previously disadvantaged people in awareness sessions to understand and appreciate their role in the sustainable development of this beautiful valley.*
- 2. Involving youth volunteers and trainees from the Masifundise Project to assess and prepare this site for the development of leadership and adventure activities.*
- 3. The training and employment of trained rangers, facilitators and skilled professionals in support services gained by this project.*
- 4. Developing affordable sporting activities in this area.*
- 5. Developing sustainable tourism related activities.*
- 6. Producing niche market products i.e honey, organic vegetables and herbs.”*

The main purpose for the use of the Property is training.

Discussion

The Applicant applied for the renewal of the lease for another 9 (NINE) years and 11 (ELEVEN) months.

**AGENDA of the
Portfolio Committee : Infrastructure & Planning
19 October 2021
(Also the agenda for the Mayoral Committee Meeting : 28 October 2021)**

A lease agreement was in the meantime entered into (for administrative and audit purposes) with special conditions included in the agreement stipulating that it is subject to the required public participation process and the Executive Mayor's approval (as delegated authority) allowing the Municipality to enter into a further lease period of 9 (NINE) years and 11 (ELEVEN) months as well as subject to Council's approval of the deviation. The lease agreement is furthermore subject to the Applicant submitting the following within 6 months from the date the lease agreement is signed by the last party thereto:

1. Land use application as indicated by the Town Planning Department.
2. Building plans for all existing structures for approval (it must be approved for this condition to be met).
3. A site development plan indicating all existing and proposed infrastructure which includes detailed information regarding the structures within the watercourse. In this regard a site plan was submitted, but confirmation must still be obtained as to whether it is sufficient.
4. A lay-out of the sewerage system and sewer connections as it is not adequately indicated on the site plan.
5. Arrangements / further discussions regarding the conservancy tank on the Property for which there are no approvals in place, which will be for the Applicant's account.

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.”

The Applicant has paid the advertisement fee and will be responsible for any further applications and processes.

**AGENDA of the
Portfolio Committee : Infrastructure & Planning
19 October 2021
(Also the agenda for the Mayoral Committee Meeting : 28 October 2021)**

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”.**

The Applicant is a non-profit company who delivers an important service to the community by means of education and training. Further as the applicant is well-established on the Property and spent a considerable amount on improvements to the Property and no complaints from the public have been received during the above mentioned lease period, it is recommended that the Property be leased directly to the Applicant without following a competitive process.

The Property is further not a business site and the rental payable will be the tariff as was approved by Council for the lease of Municipal land to registered Social Care Institutions/ Organisations/NPO's/PBO's/ Sport facilities. The tariff for the 2020/2021 financial year is R154.89 (ONE HUNDRED AND FIFTY-FOUR RAND AND EIGHTY-NINE CENTS) (VAT Excluded) per month which is payable from 1 December 2020 which is the renewal date of the lease.

In light of the above approval is requested from Council for the deviation from the Administration of Immovable Property Policy (2015) insofar paragraph 18 thereof allowing the Municipality to enter into a direct lease with the Applicant, subject to specific conditions.

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**

**AGENDA of the
Portfolio Committee : Infrastructure & Planning
19 October 2021
(Also the agenda for the Mayoral Committee Meeting : 28 October 2021)**

- 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 and further subject to the approval from the Executive Mayor for the long term lease and further subject to Council approving the deviation from paragraph 18 as discussed above.

The proposed lease was advertised and no objections were received.

Simultaneous with this request for a deviation, the further request is for the approval by the Executive Mayor of the long-term rental.

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”.

The tariff for the lease of municipal property to registered Social Care Institutions/Organisations/NPO's/PBO's/Sport facilities for the 2020/2021 financial year is R154.89 (ONE HUNDRED AND FIFTY-FOUR RAND AND EIGHTY-NINE CENTS) (VAT Excluded) per month. The agreement will stipulate that the rental amount will escalate annually in accordance with the tariff as 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.”

This is an explicit condition of the lease.

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.

**AGENDA of the
Portfolio Committee : Infrastructure & Planning
19 October 2021
(Also the agenda for the Mayoral Committee Meeting : 28 October 2021)**

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 was placed in The Village News on 11 August 2021 for a 30 (THIRTY) day objection/comment period. No objections/comments were received.

Conclusion

With reference to the above discussion, it is recommended that

- (a) The Executive Mayor approves the long-term lease of the Property for a period of 9(NINE) years and 11 (ELEVEN) months for the purpose of an adventure eco lodge and/or others to be developed on the Property at an amount of R154.89 (ONE HUNDRED AND FIFTY-FOUR RAND AND EIGHTY-NINE CENTS) (VAT Excluded) per month; and
- (b) Council approves the deviation from paragraph 18 of the Administration of Immovable Property Policy of 2015 allowing the Municipality to enter into a lease agreement with the Applicant in respect the Property for the purposes of an adventure eco lodge and/or others to be developed on the Property without following a competitive bidding process.

7. Financial Implications

The Municipality stands to gain rental in the amount of R154.89 (ONE HUNDRED AND FIFTY-FOUR RAND AND EIGHTY-NINE CENTS) (VAT excluded) per month from 1 December 2020 where after the rental amount will escalate annually on 1 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 the Applicant.

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

Senior Manager: Expenditure & Assets, Hermanus – J Vorster 028 313 8046

“As this is a revenue generating proposal with no intention to dispose of the asset, there is no objection.”

**AGENDA of the
Portfolio Committee : Infrastructure & Planning
19 October 2021
(Also the agenda for the Mayoral Committee Meeting : 28 October 2021)**

10. Annexures

Annexure A: Locality Plan

RECOMMENDATION TO THE EXECUTIVE MAYOR:

1. that the long-term lease of municipal property, being portion 5 of Farm No. 585 situated in the Hemel and Aarde Valley Hermanus (698,047m² in extent), to Overstrand Skills Training Network NPC for the purposes of an adventure eco lodge and others to be developed on the property for a period of 9 (NINE) years and 11 (ELEVEN) months at R154.89 (ONE HUNDRED AND FIFTY-FOUR RAND AND EIGHTY-NINE CENTS) (VAT excluded) per month from 1 December 2020, **be approved**;
2. that the abovementioned approval be subject to Council approving a deviation from paragraph 18 of the Administration of Immovable Property Policy of 2015;
3. that the rental amount mentioned in 1 above escalate annually on 1 July in accordance with the tariffs stipulated in the Annual Budget as approved by Council; and
4. that Overstrand Skills Training Network NPC be responsible for all cost involved in the lease agreement and any further applications and processes.

RECOMMENDATION TO THE COUNCIL:

that the deviation from paragraph 18 of the Administration of Immovable Property Policy in order to enter into a lease agreement with Overstrand Skills Training Network NPC without following a competitive bidding process, **be approved**.

RESPONSIBLE OFFICIAL :	M ERASMUS
TARGET DATE FOR IMPLEMENTATION :	31 NOVEMBER 2021
TARGET DATE TO INFORM APPLICANT :	31 NOVEMBER 2021
TARGET DATE TO INFORM OBJECTOR :	N/A

**AGENDA of the
Portfolio Committee : Infrastructure & Planning
19 October 2021
(Also the agenda for the Mayoral Committee Meeting : 28 October 2021)**

12.

PORTION 5 OF THE FARM NO. 585 SITUATED IN THE HEMEL AND AARDE VALLEY HERMANUS: DEVIATION FROM PARAGRAPH 18 OF THE ADMINISTRATION OF IMMOVABLE PROPERTY POLICY OF 2015 ALLOWING THE MUNICIPALITY TO ENTER INTO A DIRECT LEASE WITH OVERSTRAND SKILLS TRAINING NETWORK NPC

7/2/3/1

R Marinus

Acting Manager: Property Administration

12 August 2021

(028) 316 5609

THIS MATTER SERVED BEFORE THE JOINT PORTFOLIO COMMITTEE ON 19 OCTOBER 2021, WHICH COMMITTEE RECOMMENDED AS FOLLOWS:

RECOMMENDATION TO THE EXECUTIVE MAYOR:

1. that the long-term lease of municipal property, being portion 5 of Farm No. 585 situated in the Hemel and Aarde Valley Hermanus (698,047m² in extent), to Overstrand Skills Training Network NPC for the purposes of an adventure eco lodge and others to be developed on the property for a period of 9 (NINE) years and 11 (ELEVEN) months at R154.89 (ONE HUNDRED AND FIFTY-FOUR RAND AND EIGHTY-NINE CENTS) (VAT excluded) per month from 1 December 2020, **be approved**;
2. that the abovementioned approval be subject to Council approving a deviation from paragraph 18 of the Administration of Immovable Property Policy of 2015;
3. that the rental amount mentioned in 1 above escalate annually on 1 July in accordance with the tariffs stipulated in the Annual Budget as approved by Council; and
4. that Overstrand Skills Training Network NPC be responsible for all cost involved in the lease agreement and any further applications and processes.

RECOMMENDATION TO THE COUNCIL:

that the deviation from paragraph 18 of the Administration of Immovable Property Policy in order to enter into a lease agreement with Overstrand Skills Training Network NPC without following a competitive bidding process, **be approved**.

RESPONSIBLE OFFICIAL :

M ERASMUS

TARGET DATE FOR IMPLEMENTATION :

31 NOVEMBER 2021

TARGET DATE TO INFORM APPLICANT :

31 NOVEMBER 2021

ANNEXURE A

