

**AGENDA of the
Portfolio Committee: Infrastructure & Planning
22 September 2020
(Also the agenda for the Mayoral Committee Meeting: 30 September 2020)**

8.

A PORTION OF PORTION 9 OF THE FARM FRANSCHIE KRAAL NO 708 (ROAD RESERVE), ADJACENT TO ERF 387 FRANSKRAALSTAND (77 CILLIERS STREET, FRANSKRAALSTRAND): RENEWAL OF LEASE OF MUNICIPAL PROPERTY TO MR SHAWN VAN NIEKERK

7/2/3/1

A Le Roux

14 July 2020

Manager : Property Administration

(028) 316 - 3724

1. Executive Summary

To obtain approval to enter into a further lease agreement with Mr Shawn van Niekerk for a period of 3 (THREE) years in respect of municipal property, being a portion of portion 9 of the Farm Fransche Kraal No 708, ($\pm 10.2\text{m}^2$ in extent) (hereinafter referred to as "the Property"), adjacent to Erf 387 Franskraalstand, situated at 77 Cilliers Street, Franskraalstrand, for the purpose of a temporary shading structure and the placement of tables and chairs for restaurant purposes. 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)

**AGENDA of the
Portfolio Committee: Infrastructure & Planning
22 September 2020
(Also the agenda for the Mayoral Committee Meeting: 30 September 2020)**

6. Background/Discussion/Evaluation/Conclusion

Background/Discussion

The Property has been used by various owners of Erf 387 Franskraalstrand since 2000. In 2016 Mr Shawn van Niekerk (hereinafter referred to as the "Applicant"), the current owner of Erf 387 Franskraalstrand, applied for the lease of the Property to accommodate his clients by means of temporary shading and seating facilities. The Applicant has been using this portion of municipal property since 1 August 2017 for the purpose of a temporary shading structure and the placement of tables and chairs for restaurant purposes. The last lease agreement was for a period of 3 (THREE) years, which expired on 31 July 2020. The renewal process was commenced with timeously, but due to COVID-19 pandemic the Department was not able to attend to the public participation process. The rental is still being levied on the account and the renewal agreement will be from 3 August 2020.

The Property has been used by the Applicant for a few years 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 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."

As the application for renewal was received before the expiry of the last agreement there is no need for a formal application form to be completed and no application fee is payable.

**AGENDA of the
Portfolio Committee: Infrastructure & Planning
22 September 2020
(Also the agenda for the Mayoral Committee Meeting: 30 September 2020)**

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 is adjoining the property of the Applicant and it is a small area which will not separately be of any practical use to anyone else, who do not own adjoining property, for restaurant seating purposes, 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;**
- 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 further lease of the Property to Mr Shawn van Niekerk, 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 24 June 2020 for a 30 (THIRTY) day comment/objection period.

**AGENDA of the
Portfolio Committee: Infrastructure & Planning
22 September 2020
(Also the agenda for the Mayoral Committee Meeting: 30 September 2020)**

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 for the lease of municipal land for outdoor seating adjoining a restaurant.

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.”*

The Applicant will be liable for the payment of all costs relating to the renewal of the lease agreement which in this case so far is only the advertisement costs.

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 24 June 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 Mr Shawn van Niekerk be approved for a further period of 3 (THREE) years from 1 August 2020 at a rental amount of R319.26 (THREE HUNDRED AND NINETEEN RAND AND TWENTY SIX CENT) (VAT excluded) per month as approved in the Annual Budget for the 2020/2021 financial year.

**AGENDA of the
Portfolio Committee: Infrastructure & Planning
22 September 2020
(Also the agenda for the Mayoral Committee Meeting: 30 September 2020)**

7. Financial Implications

The Municipality stands to gain rental in the amount of R319.26 (THREE HUNDRED AND NINETEEN RAND AND TWENTY SIX CENT) (VAT excluded) per month where after 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 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

9. Comments from other Departments, Divisions and Administrations

**Senior Manager: Gansbaai/Stanford Administration: Mr F Myburgh –
(028) 384 8365**

“The Overstrand Municipality is in possession of a proposal of a consultant to install stormwater pipes in the road reserve (between Rossouw Street and the buildings on Erf 387, Franskraal). The design has not been completed yet and it is not clear whether the installation of these services will have an effect on the temporary structure mentioned in the application. It is also not clear what the input of the structure is having on the on-site parking requirement. Overflow parking in the area is causing unhappiness amongst neighbouring properties at the moment.

The structure in question certainly contributes to the popularity of the business and it is therefore suggested that the extension of the lease be supported on condition that provision be made in the agreement for a suspension clause with a notice period of three (3) months.”

Comments from the Property Administration Department: A condition can be included in the lease agreement as requested by Mr Myburgh. The Department must however be informed timeously should the right be enforced.

**Principal Technician: Operational Services Gansbaai : Mr W Germishuys
- (028) 384 8347**

“With regards to the application renewal of lease agreement of A portion of Portion 9 of Farm 708, Gansbaai, the Department: Operational Services has no objection to the application, subject to the following conditions:

- *That, should the applicant require water to a Portion of Portion 9 of Farm 708, a Portion of Portion 9 of Farm 708 be provided with a municipal*

**AGENDA of the
Portfolio Committee: Infrastructure & Planning
22 September 2020
(Also the agenda for the Mayoral Committee Meeting: 30 September 2020)**

- *water meter as per detail and requirements stipulated.*
- *That, should the applicant require water to a Portion of Portion 9 of Farm 708 be used permanently, a Portion of Portion 9 of Farm 708 must be provided with adequate sewer conservancy tanks, which must comply with the standards of the Department: Operational Services (Gansbaai).*
- *That the developer investigate and determine the limitations of the site in terms of sewer drainage, subject to the minimum requirements of SANS 10400- P:2010: Drainage.*
- *That on-site parking facilities be provided as per the Planning Schedule, and to the satisfactory of the Department: Operational Services.*
- *That any additional and / or extended vehicle entrances will be for the owner's account.*
- *That the Electrical- and Traffic Departments, as well as Telkom and any other relevant authorities and service providers not have objections to the application."*

Comments from Property Administration Department: Services will not be required for this Property.

Senior Town Planner: Mr S van der Merwe – (028) 313 8900

"Erf 387 Franskraal is zoned for Business Zone 1: Local Business purposes and developed with a restaurant. The development comprises amongst others an external seating area, enclosed by means of a canopy with railings that encroach over the property boundary onto the road reserve, being a portion of Farm 708/9 and zoned for Transport Zone 2: Public Road purposes. The aforesaid encroachment was permitted historically in terms of an encroachment agreement. The use of the road reserve as per the above comprises a non-conforming use. As such, the renewal of the lease agreement is supported provided that the lease area remains the same. Any future increase in the lease area will trigger the provisions of the Municipal Land Use Planning By-law."

Manager: Engineering Services: Mr R Andrew – (028) 312 8972

"The Engineering Services Department has no objection to the proposed application."

Building Inspector: Mr R Dickson - (028) 384 8319

"Overstrand Building Department does not have any objection to the application for the renewal of 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

**AGENDA of the
Portfolio Committee: Infrastructure & Planning
22 September 2020
(Also the agenda for the Mayoral Committee Meeting: 30 September 2020)**

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 portion 9 of the Farm Fransche Kraal No 708, adjacent to Erf 387 Franskraalstand ($\pm 10.2\text{m}^2$ in extent) situated at 77 Cilliers Street, Franskraalstrand, to Mr Shawn van Niekerk for the purpose of a temporary shading structure and the placement of tables and chairs for restaurant purposes at the rental amount of R319.26 (THREE HUNDRED AND NINETEEN RAND AND TWENTY SIX CENT) (VAT excluded) per month for a period of 3 (THREE) years from 1 August 2020 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 every year on the 1st of July in accordance with the tariffs stipulated in the Annual Budget as approved by Council, the next escalation to be on 1 July 2021.

RESPONSIBLE OFFICIAL:	N LIEBENBERG
TARGET DATE FOR IMPLEMENTATION:	11 OCTOBER 2020
TARGET DATE TO INFORM APPLICANT:	7 OCTOBER 2020
TARGET DATE TO INFORM OBJECTOR:	N/A

**AGENDA of the
Portfolio Committee : Infrastructure & Planning
22 September 2020
(Also the agenda for the Mayoral Committee Meeting : 30 September 2020)**

8.

A PORTION OF PORTION 9 OF THE FARM FRANSCHE KRAAL NO 708 (ROAD RESERVE), ADJACENT TO ERF 387 FRANSKRAALSTAND (77 CILLIERS STREET, FRANSKRAALSTRAND): RENEWAL OF LEASE OF MUNICIPAL PROPERTY TO MR SHAWN VAN NIEKERK

7/2/3/1

A Le Roux

14 July 2020

Manager : Property Administration

(028) 316 - 3724

THIS MATTER SERVED BEFORE THE JOINT PORTFOLIO COMMITTEE ON 22 SEPTEMBER 2020, WHICH COMMITTEE SUPPORTED THE RECOMMENDATION

RESPONSIBLE OFFICIAL:

N LIEBENBERG

TARGET DATE FOR IMPLEMENTATION:

11 OCTOBER 2020

TARGET DATE TO INFORM APPLICANT:

7 OCTOBER 2020

TARGET DATE TO INFORM OBJECTOR:

N/A

ANNEXURE A

