

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

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**2.**

**PORTIONS OF UNREGISTERED ERF 10572 HERMANUS (A PORTION OF ERF 1253 HERMANUS) (ROAD RESERVE) ADJACENT TO ERVEN 1269 – 1274 AND BETWEEN ERVEN 11097 AND 1286 HERMANUS AT THE ENTRANCE TO THE HERMANUS GOLF CLUB (SITUATED IN GOLF STREET, AT THE SOUTHERN SIDE OF THE GOLF CLUB, HERMANUS): RENEWAL OF LEASE OF MUNICIPAL PROPERTY TO HERMANUS GOLF CLUB**

**7/2/3/1**

**A Le Roux**

**Manager: Property Administration**

**10 March 2021**

**(028) 316 - 5623**

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**1. Executive Summary**

To obtain approval to enter into a further lease agreement with Hermanus Golf Club (hereinafter referred to as “the Applicant”) for a period of 9 (NINE) years and 11 (ELEVEN) months in respect of municipal property, being portions of unregistered Erf 10572 Hermanus (a portion of Erf 1253 Hermanus) adjacent to erven 1269 – 1274 and between erven 11097 and Erf 1286 Hermanus at the entrance to the Hermanus Golf Club (jointly ±495m<sup>2</sup> in extent) situated in Golf Street, at the Southern side of the Golf Club, Hermanus (hereinafter referred to as “the Property”), for the purposes of retaining an existing fence and gate on municipal property. 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**

The Applicant has been using the Property since May 2010 when an encroachment agreement was entered into with the Applicant. The agreement expired, and the Applicant applied for the renewal of the agreement, which was subsequently dealt with as a new application as the agreement already expired. In terms of the amended Administration of Immovable Property Policy, 2015, the application was dealt with as a lease application. A short-term lease agreement was entered into with the Applicant for a period of 3 (THREE) years, which commenced on 1 August 2017 and expired on 31 July 2020. The Applicant applied for a further lease period of 9 (NINE) years and 11 (ELEVEN) months.

The process for the renewal of the lease agreement was commenced with timeously, however during the Covid-19 pandemic the Property Administration Department had to work between home and the office and unfortunately the memorandum requesting in principle approval was misplaced during that time. Therefore, a new memorandum requesting in principle approval for the long-term lease had to be submitted, resulting in the delay of the process.

The Finance Department was requested to continue to levy the rental pending the finalisation of the renewal process as the Applicant is still in possession of the Property.

A lease agreement was sent to the Applicant for signature (for administrative and audit purposes) with special conditions included in the agreement stipulating that the lease agreement is subject to a public participation process and the subsequent approval by the Executive Mayor (as delegated authority) to enter into the long term lease agreement.

The Property has been used by the Applicant for the past 11 years without complaints from the public. The municipal account is paid up to date. The Applicant, as a sports club, delivers a recreational service to the community of Hermanus.

### **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**

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***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.

**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 proposal is that the lease agreement be renewed for a further period of 9 (NINE) years and 11 (ELEVEN) months for the purposes of retaining an existing fence and gate on municipal property, thus being a direct lease.
- Although the application is for a long-term lease, the projected income value for the lease period will not exceed R10 million as the Applicant pays a nominal amount in rental as approved in the annual budget.
- The use and management of the Property will not be for profit as it

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will be managed by a sports club and the Property is only used for security purposes. The rental will not be market related rather the amount as approved in the annual budget, the monthly rental for 2020/2021 being R154.78 (ONE HUNDRED AND FIFTY-FOUR RAND AND SEVENTY EIGHT CENTS) (VAT excluded), for sports facilities.

- Unregistered Erf 10572 Hermanus (a portion of Erf 1253 Hermanus) is landlocked between the Applicant and adjoining property owners. As the adjoining property owners are already using a portion of the Property, the Property applied for cannot be used by anyone else and a competitive bidding process will cause unnecessary delay and costs.
- Lastly, the Applicant is a well-established sports facility and provides a recreational service to the community of Hermanus and no complaints have been received during the previous periods of use.

It is therefore 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 the Applicant, subject to a public participation process being followed and further subject to the approval by the Executive Mayor as delegated authority.

The proposed lease was advertised in The Village News on 24 February 2021 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.”**

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The tariff for lease of municipal property to registered Social Care Institutions/Organisations/NPO's/PBO's/Sport facilities is R154.78 (ONE HUNDRED AND FIFTY-FOUR RAND AND SEVENTY EIGHT CENTS) (VAT excluded) per month for the 2020/2021 financial year. 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.”***

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 published in The Village News on 24 February 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 the lease of the Property to the Applicant be approved for a further period of 9 (NINE) years and 11 (ELEVEN) months from 1 August 2020 at a rental amount of R154.78 (ONE HUNDRED AND FIFTY-FOUR RAND AND SEVENTY EIGHT CENTS) (VAT excluded) per month as approved in the Annual Budget for the 2020/2021 financial year.

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**7. Financial Implications**

The Municipality stands to gain rental in the amount of R154.78 (ONE HUNDRED AND FIFTY-FOUR RAND AND SEVENTY EIGHT CENTS) (VAT excluded) per month from 1 August 2020 for the 2020/2021 financial year where after the rental amount will escalate every year on the 1<sup>st</sup> 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**

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

*“The town planning office has no objection towards the proposed lease of a portion of unregistered Erf 10572 Hermanus, however it should be noted that the portion identified for the proposed lease area have been utilized by the property owners south of Erf 10572 Hermanus. Therefore, it will be best to first identify where there are existing lease agreements with the property owners south of Erf 10572 Hermanus and that those lease agreements be respected.”*

There is an arrangement with the adjoining owners that they may beautify the areas between their erf boundaries and the fence erected by the Applicant. The lease with the Applicant will thus not have any effect on the areas used by the adjoining owners for gardening purposes.

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

*“As this is an income generating proposal involving an institution who delivers a service to the community of Hermanus, with no intention to dispose of the asset(s), there is no objection to the report.”*

**10. Annexures**

Annexure A: Locality Map

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**RECOMMENDATION:**

1. that the lease of municipal property, being portions of unregistered Erf 10572 Hermanus (a portion of Erf 1253 Hermanus) adjacent to erven 1269 – 1274 and between erven 11097 and 1286 Hermanus at the entrance to the Hermanus Golf Club (jointly ±495m<sup>2</sup> in extent), to Hermanus Golf Club, for the purpose of retaining an existing fence and gate on municipal property at a rental amount of R154.78 (ONE HUNDRED AND FIFTY-FOUR RAND AND SEVENTY EIGHT CENTS) (VAT excluded) per month for a period of 9 (NINE) years and 11 (ELEVEN) months 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.

<b>RESPONSIBLE OFFICIAL:</b>	<b>N LIEBENBERG</b>
<b>TARGET DATE FOR IMPLEMENTATION:</b>	<b>24 MAY 2021</b>
<b>TARGET DATE TO INFORM APPLICANT:</b>	<b>10 MAY 2021</b>
<b>TARGET DATE TO INFORM OBJECTOR:</b>	<b>N/A</b>

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**7/2/3/1**

**A Le Roux**

**10 March 2021**

**Manager: Property Administration**

**(028) 316 - 5623**

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**THIS MATTER SERVED BEFORE THE JOINT PORTFOLIO COMMITTEE ON 20 APRIL 2021, WHICH COMMITTEE SUPPORTED THE RECOMMENDATION**

**RESPONSIBLE OFFICIAL:**

**N LIEBENBERG**

**TARGET DATE FOR IMPLEMENTATION:**

**24 MAY 2021**

**TARGET DATE TO INFORM APPLICANT:**

**10 MAY 2021**

**TARGET DATE TO INFORM OBJECTOR:**

**N/A**

ANNEXURE A

