

**AGENDA of the
Portfolio Committee : Infrastructure & Planning
17 August 2021
(Also the agenda for the Mayoral Committee Meeting : 24 August 2021)**

**2.
PORTIONS OF REMAINDER ERVEN 243 AND 1253 AS WELL AS ERF 4935
HERMANUS: RENEWAL OF LEASE OF MUNICIPAL PROPERTIES TO JOSHGRO
INVESTMENTS 9 (PTY) LTD**

7/2/3/1

A Le Roux

Manager: Property Administration

21 June 2021

(028) 316 3724

1. Executive Summary

To obtain approval to enter into a further lease agreement with Joshgro Investments 9 (Pty) Ltd, in respect of municipal properties, being portions of Remainder Erven 243 and 1253 as well as Erf 4935 Hermanus (jointly ±160m² in extent) situated in Main Road opposite the Marine Drive entrance for a period of 4 (FOUR) years for placing tables and chairs (and/or benches) for outdoor seating for restaurant purposes. 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 Priority

Provision of democratic, accountable and ethical governance

4. Delegated Authority

Executive Mayor

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

Joshgro Investments 9 (Pty) Ltd, hereinafter referred to as “the Applicant”, has a lease agreement with the Municipality for municipal properties being portions of Remainder Erven 243 and 1253 as well as Erf 4935 Hermanus

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(jointly ±160m² in extent), hereinafter referred to as “the Property”, for the purpose of placing tables and chairs for restaurant purposes. The lease agreement will expire on 30 September 2021.

Discussion

The Applicant applied for the renewal of the lease agreement for a further period of 4 (FOUR) years.

The Property has been used by tenants of the Applicant since 2013 without complaints from the public. The municipal account is up to date and the rental paid every month.

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.”

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”.

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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 small areas which will not separately be of any practical use to anyone else, who do not own adjoining property, for restaurant seating purposes, 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 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.

The proposed lease was advertised in The Village News on 14 July 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”.

There is an approved tariff for the lease of municipal property for outdoor seating for restaurant purposes which is applicable. The tariff for 2021/2022 financial year is R32.61/m² (THIRTY TWO RAND AND SIXTY ONE CENTS PER SQUARE METRE) (VAT Excluded) per month.

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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 pay all costs relating to the application which in this case is only the advertisement. No survey or valuation was done and therefore no costs were incurred in this regard.

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.

B. Advertisement/Notification

An advertisement for the lease of the Property was placed in The Village News on 14 July 2021 for a 30 (THIRTY) day objection/comment period.

Conclusion

With reference to the above discussion, it is recommended that the renewal of the lease agreement with the Applicant be approved for a further period of 4 (FOUR) years from 1 October 2021 at a rental amount of R32.61/m² (THIRTY TWO RAND AND SIXTY ONE CENTS PER SQUARE METRE) (VAT Excluded) per month.

7. Financial Implications

The Municipality stands to gain rental in the amount of R32.61/m² (THIRTY TWO RAND AND SIXTY ONE CENTS PER SQUARE METRE) (VAT Excluded) per month, such rental to escalate every year on the 1st of July as stipulated in the Overstrand Municipality’s Tariffs for the specific financial year.

8. Staff Implications

None

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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.

10. Annexures

Annexure A: Locality Plan

RECOMMENDATION:

1. that the lease of municipal properties, being portions of Remainder Erven 243 and 1253 as well as Erf 4935 Hermanus (jointly ±160m² in extent), to Joshgro Investments 9 (Pty) Ltd for placing tables and chairs (and/or benches) for outdoor seating for restaurant purposes at the rental amount of R32.61/m² (THIRTY TWO RAND AND SIXTY ONE CENTS PER SQUARE METRE) (VAT Excluded) per month for a period of 4 (FOUR) years from 1 October 2021 in terms of the Administration of Immoveable 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 as stipulated in the Overstrand Municipality's Tariffs for the specific financial year, as approved by Council in the Annual Budget, the next escalation to be on 1 July 2022.

RESPONSIBLE OFFICIAL : M ERASMUS

TARGET DATE FOR IMPLEMENTATION : 13 SEPTEMBER 2021

TARGET DATE TO INFORM APPLICANT : 31 SEPTEMBER 2021

TARGET DATE TO INFORM OBJECTOR : N/A

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21 June 2021

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**THIS MATTER SERVED BEFORE THE JOINT PORTFOLIO COMMITTEE ON
17 AUGUST 2021, WHICH COMMITTEE SUPPORTED THE RECOMMENDATION**

RESPONSIBLE OFFICIAL :

M ERASMUS

TARGET DATE FOR IMPLEMENTATION :

13 SEPTEMBER 2021

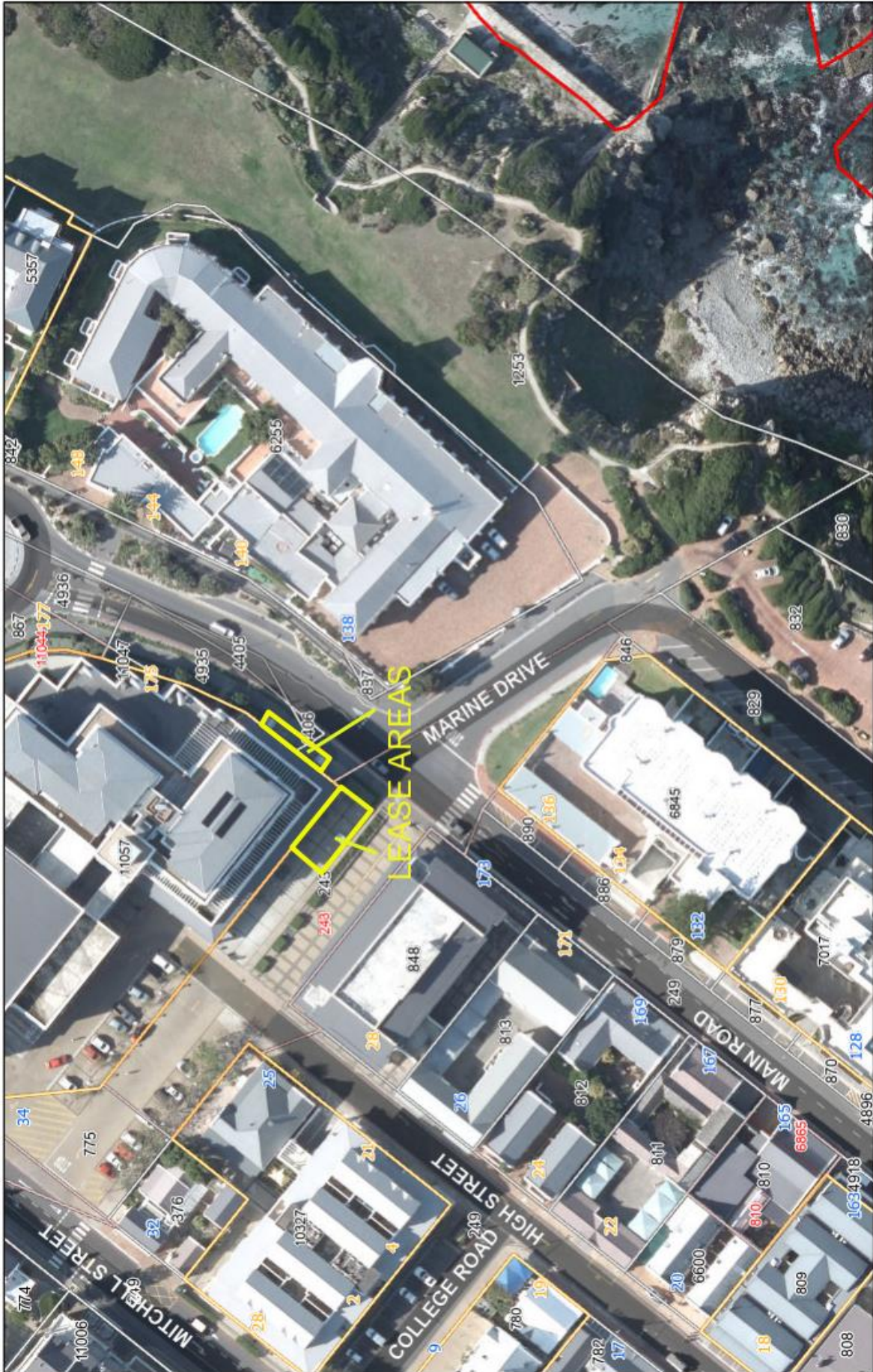
TARGET DATE TO INFORM APPLICANT :

31 SEPTEMBER 2021

TARGET DATE TO INFORM OBJECTOR :

N/A

ANNEXURE A



OVERSTRAND MUNICIPALITY

Portions of Remainder Erf 1253, Remainder Erf 243 and Erf 4935 Hermanus

Date: 2021/05/18